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**M/047/0090 PR SPRINGS MINE INFORMAL CONFERENCE**

M/047/0090

Earth Energy Resources

PR Springs Mine Informal Conference

TAKEN AT: Department of Natural Resources  
1594 West North Temple, Room 1060  
Salt Lake City, Utah

DATE: Tuesday, July 27, 2010

TIME: 2:03 p.m. to 4:21 p.m.

REPORTED BY: Michelle Mallonee, RPR

ATKINSON BAKER COURT REPORTING  
JOB #A406FEA

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**AUG 31 2010**

**Div. of Oil, Gas & Mining**

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<div>1 APPEARANCES</div> <div>2</div> <div>3</div> <div>4 DIVISION OF OIL, GAS AND MINING:</div> <div>5 John R. Baza, Director and Hearing Officer</div> <div>6 Dana Dean, Associate Director, Mining</div> <div>7 Paul Baker, Minerals Program Manager</div> <div>8 Leslie Heppler, Environmental Scientist</div> <div>9 Tom Munson, Environmental Scientist</div> <div>10 Lynn Kunzler, Environmental Scientist</div> <div>11 Jim Springer, Public Information Officer</div> <div>12</div> <div>13 ASSISTANT ATTORNEYS GENERAL:</div> <div>14 Steven F. Alder - Division Attorney</div> <div>15 Fred Donaldson - Division Attorney</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 2</div>	<div>1 Tuesday, July 27, 2010; Salt Lake City, Utah</div> <div>2 PROCEEDINGS</div> <div>3 2:03 p.m.</div> <div>4 ---</div> <div>5 THE HEARING OFFICER: Folks, my name is John</div> <div>6 Baza. I'm the director of the Division of Oil, Gas and</div> <div>7 Mining, and I'm also the hearing officer for this</div> <div>8 informal conference we're having today. I'm going to</div> <div>9 stand for a minute, just so everyone can hear me. And</div> <div>10 this is to let the individuals know, who want to speak,</div> <div>11 that you need to clearly identify yourself for the court</div> <div>12 reporter, and speak up because we don't have a sound</div> <div>13 system in this room. So she may find it hard to hear</div> <div>14 what you are saying if you don't project a little bit.</div> <div>15 So let me get started with this. This is kind</div> <div>16 of our second time doing an informal conference on this</div> <div>17 particular matter. And we did something similar to this</div> <div>18 back in November -- not nearly so many people.</div> <div>19 The informal conference that we're doing is one</div> <div>20 that's prescribed by rule. And when we do a minerals</div> <div>21 permit, the -- after that permit has been analyzed and a</div> <div>22 decision is made by the Division, it then goes out for a</div> <div>23 public comment period and is noticed up in the paper.</div> <div>24 And during that 30-day period after we've made a</div> <div>25 decision, there's an opportunity for people to send in</div> <div>Page 4</div>
<div>1 FOR EARTH ENERGY RESOURCES:</div> <div>2 A. JOHN DAVIS, ESQ.</div> <div>3 HOLME ROBERTS &amp; OWEN, LLP</div> <div>4 299 South Main Street</div> <div>5 Suite 1800</div> <div>6 Salt Lake City, Utah 84111-2263</div> <div>7 BARCLAY CUTHBERT, Vice President of Operations, Earth</div> <div>8 Energy Resources</div> <div>9 KARLA KNOOP, JBR Environmental Consultants</div> <div>10</div> <div>11 ALSO PRESENT:</div> <div>12 JOHN WEISHEIT, Conservation Director, Living Rivers</div> <div>13 JULIANA WILLIAMS, Peaceful Uprising</div> <div>14 ASHLEY ANDERSON, Peaceful Uprising</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 3</div>	<div>1 comments to us to indicate that they want a hearing of</div> <div>2 this nature, and we respond to that.</div> <div>3 And that's exactly what happened in this case,</div> <div>4 is that there was a public notice. We offered a period</div> <div>5 of time for public comment. We did receive such a public</div> <div>6 comment requesting that we hold this informal conference.</div> <div>7 Now, I will tell you that the rules we follow in</div> <div>8 that regard might be a little bit different than what</div> <div>9 you've seen in other public hearings. In other words,</div> <div>10 this is not a hearing to just take public comment. I</div> <div>11 think the period of time we had for that is prescribed by</div> <div>12 rules. But having said that, we're not here to tell</div> <div>13 anybody, You can't speak, or, You can't provide us with</div> <div>14 information that's necessary in our analysis of the</div> <div>15 permit.</div> <div>16 We want to be as inclusive as possible in</div> <div>17 getting information that's going to help us make as good</div> <div>18 a decision as possible.</div> <div>19 We're going to follow a format here, which was</div> <div>20 kind of laid out at the first hearing that we had. And</div> <div>21 in that, I'm going allow the Division to have first say.</div> <div>22 Since they are the one who analyzed the permit, they are</div> <div>23 the ones who made the decision on the record, we're going</div> <div>24 to give the Division a chance to speak first and provide</div> <div>25 us with some background in how the permit came to be.</div> <div>Page 5</div>

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<p>1 Following that, we have the letter of request 2 for the hearing from a group, Living Waters, Peaceful -- 3 MR. WEISHEIT: Living Rivers. 4 THE HEARING OFFICER: Living Rivers, excuse me. 5 And I'm going to give them a chance to kind of 6 express why they sent in the letter and why they wanted 7 the hearing and what their concerns are. 8 Following that, we would normally give time to 9 the applicant, which is Earth Energy Resources, to 10 respond to that. And we would just generally go from 11 there and see if there was anything else that needs to be 12 considered or questions that need to be asked and answers 13 obtained at that point. 14 Just so you know, even though I'm the director 15 of the Division, I'm as impartial as I can be in this 16 matter. I have not been involved in the analysis by the 17 Division, in terms of issuing that permit. I know about 18 as much of this matter that we're hearing today as the 19 letter that was received from Living Rivers and the 20 notice of hearing that we've published for this matter. 21 So having said that, Division, I'm sure you have 22 a copy of the letter that was sent by Living Rivers. Has 23 the applicant received a copy of that letter, and do you 24 know what it contains? 25 MR. DAVIS: Yes, we have.</p> <p style="text-align: right;">Page 6</p>	<p>1 where we just start throwing out our comments. I think 2 there is an opportunity to speak through those 3 represented at the table here. And I think that probably 4 you are going to hear from them things that are on your 5 mind, anyway. 6 But if there's something that doesn't get 7 addressed, if there's some point that is missed that is 8 valuable to our analysis of this, we certainly want to 9 hear it. And at the appropriate point in the meeting, 10 I'll ask if there's any input of that nature. 11 Does that sound reasonable to the parties at the 12 table? Okay. 13 Do you have any comment on the proposed format 14 that I've laid out? 15 Yes, Steve. 16 MR. ALDER: You might indicate the opportunities 17 for appeal and decision, and that sort of thing -- or we 18 will. I will. 19 THE HEARING OFFICER: Okay, if you would. 20 MR. ALDER: I will. 21 THE HEARING OFFICER: I'll tell you this: I'm 22 not a lawyer, okay. I'm an engineer by background, and I 23 administer the affairs of the Division. But I may have 24 to go out and seek legal counsel in order to make a 25 decision on this hearing that we're having today. But as</p> <p style="text-align: right;">Page 8</p>
<p>1 THE HEARING OFFICER: So, you know, I don't know 2 that there's a big need to rehash a lot of that. But at 3 least make sure that if you have points that you want to 4 address related to that letter, let's get it in the 5 information that we can use to analyze. 6 Yes, ma'am. 7 MS. FRANKLIN: (Inaudible.) 8 THE HEARING OFFICER: Ma'am, you need to stand 9 up and say your name so that the court reporter can hear 10 you. 11 MS. FRANKLIN: My name is Naomi Franklin. I'd 12 like to know the extent of the comment period and to 13 where comments may be made. 14 THE HEARING OFFICER: Okay. I hope the Division 15 is going to address that in some of their statements. 16 But as I understand it, the comment period for this was 17 the 30 days after we initially published notice. So that 18 comment period is over and done with. This hearing is 19 not a hearing to accept additional public comment. This 20 hearing is to address the concerns expressed by Living 21 Rivers in the letter that they sent to us. And that's 22 specifically what we're here for. 23 Now, again, as I said in the beginning, we're 24 not here to shut down valuable input into this. But at 25 the same time, I don't want this to become a free for all</p> <p style="text-align: right;">Page 7</p>	<p>1 Steve points out, there is an opportunity for appeal on 2 this. And normally that appeal, once I render a 3 decision, is going to go to our Board of Oil, Gas and 4 Mining. They meet once a month. There are set 5 procedures on how to file a request for a Board hearing. 6 And those are all laid out in regulation. 7 But Steve, you can certainly address that. 8 Yes. 9 MS. WILLIAMS: Will there be any time limits 10 on -- between the different parties? 11 THE HEARING OFFICER: You know, I think we ought 12 to discuss that as part of your statements and what we 13 decide here. There is no hard and fast rule to an 14 informal conference. What we're doing today isn't guided 15 by regulation, other than it says you need to have one of 16 these meetings. So basically what we do today, we'll 17 decide it as we go. So whatever an appropriate time 18 frame is that we can all agree to would be what I would 19 hope for. 20 Maybe for the benefit of the court reporter, can 21 we just define who is going to be the principal 22 spokesperson for each of the parties? 23 The Division, it will be... 24 MR. ALDER: Yeah. Let me introduce myself. I'm 25 Steve Alder. I'm the attorney for the Division, and I</p> <p style="text-align: right;">Page 9</p>

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<p>1 work at the attorney general's office. The Division 2 today will be -- we have three people -- well, we 3 actually have all the staff that analyzed this 4 application here.</p> <p>5 Paul Baker is to my immediate right. He's in 6 charge of the minerals program. Dana Dean is in charge 7 of the mining program for the Division of Oil, Gas and 8 Mining. And they will introduce the members of their 9 staff that reviewed this appeal, as we go forward. And 10 so I will speak just as an introductory matter and then 11 turn the time over to the Division.</p> <p>12 THE HEARING OFFICER: Okay.</p> <p>13 And for Living Rivers, could you introduce 14 yourself and who is going to be speaking.</p> <p>15 MR. WEISHEIT: Yes. My name is John Weisheit. 16 That is spelled W-E-I-S-H-E-I-T. And it's pronounced 17 Weisheit. It's a German name. I am the conservation 18 director of Living Rivers. And I am the Colorado 19 Riverkeeper of the Waterkeeper Alliance. And I live in 20 Moab, Utah. And I would like to introduce Juliana 21 Williams. Also -- well, he's both a Moab and a Salt Lake 22 City person -- this is Ashley Anderson.</p> <p>23 THE HEARING OFFICER: Okay. Glad to meet you. 24 And for the applicant.</p> <p>25 MR. DAVIS: Thank you, Mr. Baza.</p> <p style="text-align: right;">Page 10</p>	<p>1 us some background and history on what brings us here 2 today.</p> <p>3 MR. ALDER: Okay. I'll remain seated, if that's 4 all right -- if everybody can hear me -- and just kind of 5 turn sideways just a little bit.</p> <p>6 This decision was made to approve a mine permit, 7 what's called a large mine permit under the Utah mining 8 laws. And there are certain requirements established by 9 statute, and that's at 40-8-1, that's the Utah Code. And 10 that is the authority of the Division to regulate these 11 kind of mining programs. They have adopted rules. The 12 rules are under the Administrative Code in R647-4, that's 13 for larger mines.</p> <p>14 And the way the permit is applied for and 15 approved is dictated by those statutes and those rules. 16 There are certain things that an applicant has to do to 17 satisfy the Division to get a permit. They include -- 18 certain things have to be included in the application. 19 They include a mine plan, a reclamation plan, some 20 analysis of impacts. There has to be a surety provided.</p> <p>21 But there are a lot of things that are not 22 required. Some matters are subject to the jurisdiction 23 of other agencies. The Division of Air Quality, Division 24 of Water Quality, Water Rights, they all have 25 jurisdiction over a specific aspect of state law. There</p> <p style="text-align: right;">Page 12</p>
<p>1 My name's John Davis. I'm an attorney here in 2 Salt Lake with Holme Roberts &amp; Owen. I represent Earth 3 Energy Resources. To my left is Mr. Barclay Cuthbert. 4 Do you want me to spell that? B-A-R-C-L-A-Y, 5 C-U-T-H-B-E-R-T. And Mr. Cuthbert is the vice president 6 of operations for -- I'll call it EER, rather than go 7 through Earth Energy Resources each time.</p> <p>8 Then to my right is Karla Knoop. And that last 9 name is spelled K-N-O-O-P. And Karla is with JBR 10 Environmental, an environmental consulting firm here in 11 Salt Lake City. And she'll be testifying on some of the 12 technical aspects of our NOI.</p> <p>13 THE HEARING OFFICER: Okay. And I'm looking for 14 Vicki. Is Vicki in here? Vicki Southwick? No. Okay.</p> <p>15 I think we have a sign-up sheet going around. 16 And does that sign-up sheet ask for phone and email 17 information?</p> <p>18 MR. KUNZLER: Name, address, phone, and email.</p> <p>19 THE HEARING OFFICER: Okay. So as that goes 20 around, please add your name to the list so that we know 21 that you're here. We'll try also to use that list to 22 inform people what the decision making in this matter is 23 going to be.</p> <p>24 So with that, I guess that we're going to turn 25 some time over to the Division to start us out and give</p> <p style="text-align: right;">Page 11</p>	<p>1 are federal laws that also apply to a permit.</p> <p>2 Our obligation is to make sure they satisfy the 3 Division's rules and regulations as required by statute. 4 And we require that an applicant eventually satisfy all 5 state and local rules. So I think -- there are county 6 rules that may apply, to the extent that they're not 7 preempted by state or federal law.</p> <p>8 That's important here, because as I've reviewed 9 the letter that was filed by Living Rivers, there are a 10 lot of important issues that are significant to the 11 public debate about energy. And obviously, this group is 12 concerned about the larger picture of energy and policy. 13 That is not the role of the Division. The role of the 14 Division is to not set policy, but to enforce the policy 15 that's been set by the legislature.</p> <p>16 So with that, sort of, preview of 17 the understanding of what the Division did, I'd like to 18 turn the time over to Paul Baker to give a history of the 19 size, the scope. There's some important differences 20 between this project and other projects that have 21 received a lot of national prominence in Canada and other 22 places, and Paul will explain that. He will be able to 23 refer to the maps on the Board.</p> <p>24 I would say that -- just a little more 25 background on what happened before -- there was an appeal</p> <p style="text-align: right;">Page 13</p>

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<p>1 brought by Southern Utah Wilderness Alliance of this 2 decision. And it was determined that at the time that 3 the decision was made final, it's supposed to be 4 published in the county, and it was not published in 5 Grand County. So we republished in Grand County. We got 6 this application. So this is sort of a second hearing of 7 this permit, in case you were wondering why we said that, 8 why it's been heard before. That's what happened. And 9 some of the issues that have been raised are the same as 10 were raised by Southern Utah Wilderness Alliance, some of 11 them are new.</p> <p>12 We hope we can provide a fair hearing. My only 13 objection to -- and I guess agreement with the 14 introductory statement by Director Baza is that, since we 15 can't address things like carbon levels or global 16 warming, we don't think a lot of time should be spent in 17 this hearing talking about that. But that's just the 18 Division's point of view.</p> <p>19 I'll turn the time over to Paul Baker.</p> <p>20 MR. BAKER: My name is Paul Baker. I'm 21 manager of the minerals regulatory program for the 22 Division of Oil, Gas and Mining. I'd like to introduce a 23 few people on the staff. Lynn Kunzler is a biologist; 24 Tom Munson, who is a hydrologist; and Leslie Heppler, who 25 is a geologist and the permit lead for this project.</p> <p style="text-align: right;">Page 14</p>	<p>1 One of the issues that was raised in the 2 previous hearing was that we do not have detailed plans 3 for the west pit. And we agreed with Southern Utah 4 Wilderness Alliance, and the Sierra Club, and the 5 operator, that when the operator decides to move into the 6 west pit, that that will be a significant revision that 7 will be advertised to the public. And so we will take 8 further public comments at that time.</p> <p>9 As with any mining operation, it would begin by 10 stripping topsoil from the mine areas and the operations 11 areas. Perhaps I could point out to the blue. Up here 12 is a plant site. It's basically a processing area. And 13 then this -- it's kind of an orange-ish yellow -- that's 14 a topsoil storage area. So the topsoil would be stripped 15 from all of the areas proposed to be disturbed. The 16 operator would begin by stripping the topsoil and then 17 overburden. And initially, the overburden would be 18 brought down into this area. And as the sand -- the tar 19 sand is processed, it would be stored in this area. And 20 then as the pit progresses, as there's more room, the pit 21 would be back filled, so the processed sand and 22 additional overburden and interburden would be stored 23 within the pit.</p> <p>24 So there would be no discharge of runoff water 25 from the pit or from the processing area. That would all</p> <p style="text-align: right;">Page 16</p>
<p>1 And perhaps I could elaborate just a little bit 2 more about the public notice process. We originally gave 3 tentative approval for this project in May of 2009. And 4 that was published in the Salt Lake Tribune and the 5 Vernal Express. And as Steve mentioned, we did not 6 publish it in the Moab paper at that time.</p> <p>7 We subsequently published it on March 25 of this 8 year in Moab Times Independent. And a couple of weeks 9 prior to that, we had notified the Grand County council 10 of this tentative decision.</p> <p>11 I'd like to refer to the maps and just give a 12 brief overview of the project. The project is on the 13 Grand and Uintah County line. It straddles the line. 14 And -- okay, here's Vernal, here's I-70, and here's the 15 project, right here. There is currently a permitted 16 five-acre site. This map shows the proposed entire -- 17 the total proposed operation. And this black portion, 18 right here, is the current five-acre site. And these 19 other maps show, like, some lease areas. And this shows 20 watershed boundaries and other water features.</p> <p>21 The operator has proposed to begin operations in 22 this area here, the pink. And there would be a waste 23 dump here. This is called the north pit -- that's what 24 we refer to it as. This, over here, is referred to as 25 the west pit.</p> <p style="text-align: right;">Page 15</p>	<p>1 be self-contained.</p> <p>2 Those are really some of the basic items, I 3 guess. Upon reclamation, it would be graded to about a 4 two-and-a-half to one slope -- no steeper than two to 5 one, two-and-a-half to one -- and topsoiled and 6 revegetated. It's quite simple, but that's basically it. 7 And I guess that's all.</p> <p>8 Do you have questions?</p> <p>9 MR. WEISHEIT: Yeah. Hi, Paul. It's nice to 10 meet you. My name is John Weisheit. I appreciate the 11 letters that you wrote to us.</p> <p>12 I have a question about the public comment for 13 the west pit. Does that happen before or after initial 14 mining operations?</p> <p>15 MR. BAKER: The initial mining operations would 16 begin, theoretically, now. But as I mentioned, we don't 17 have a detailed plan for the west pit now. And so there 18 would be a further comment period before the west pit was 19 opened.</p> <p>20 MR. WEISHEIT: But after initial mining begins?</p> <p>21 MR. BAKER: Yes. Yes, that's right.</p> <p>22 MR. WEISHEIT: Okay. Thank you.</p> <p>23 MR. BAKER: Okay.</p> <p>24 THE HEARING OFFICER: Mr. Alder, do you have 25 more that you want to present?</p> <p style="text-align: right;">Page 17</p>

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<p>1 MR. ALDER: There will probably be a lot of 2 details that we can add in response to the comments. I 3 think we would prefer to hear the objections and comments 4 from the petitioners.</p> <p>5 THE HEARING OFFICER: Okay. Now you'll notice, 6 Mr. Weisheit went ahead and asked a question. I have no 7 problem with that, as long as we can agree that that's 8 fair.</p> <p>9 MR. ALDER: We're fine with that.</p> <p>10 THE HEARING OFFICER: Okay. All right. 11 Well at this point, Mr. Weisheit, I'm going to 12 turn some time over to you, to kind of explain your 13 letter and concerns that you have with the Division's 14 process here.</p> <p>15 MR. WEISHEIT: Thank you. And I would like to 16 make comments, but Juliana -- if it would be all right -- 17 I would like for her to go first because she --</p> <p>18 THE HEARING OFFICER: Certainly.</p> <p>19 MR. WEISHEIT: -- I think, does a great job of 20 summarizing.</p> <p>21 THE HEARING OFFICER: Okay.</p> <p>22 MS. WILLIAMS: My name is Juliana Williams. And 23 I am an organizer with Peaceful Uprising, and I do work 24 with Living Rivers. I have a degree in geology, and am 25 in the process of obtaining a Master of Public Policy.</p> <p style="text-align: right;">Page 18</p>	<p>1 arsenic, mercury, benzene, and cyanide. And also, 2 according to environmental -- the environmental integrity 3 project, refining tar sands crude results in higher 4 emissions of sulfur dioxide, hydrogen sulfide, sulfuric 5 acid mist, and nitrogen oxides, more than refining 6 conventional oil. And we felt that this is a very 7 important part in looking at the total impact of the 8 mine, because if the tar sands crude is refined in Utah, 9 that will have an affect on the people near the 10 refineries.</p> <p>11 And in 2009, there were four refineries in Utah 12 that imported tar sands crude oil from Canada and 13 processed it. Those were Chevron in Salt Lake City, 14 Tesoro West Coast in Salt Lake City, Holly Refining and 15 Marketing in Woods Cross, and Silver Eagle Refining in 16 Woods Cross. And refining tar sands oil requires 17 specific adjustment to operations so that they can 18 accommodate the additional impurities in the oil compared 19 to conventional oil. And together, these refineries 20 imported approximately 5.2 million barrels of tar sands 21 crude. Under full production of 2000 barrels a day, 350 22 days a year, the PR Springs mine would increase the 23 amount of tar sands crude refined in Utah by 13 percent. 24 And we feel that that is a significant increase in the 25 risk to the people and the health of Utah, that should be</p> <p style="text-align: right;">Page 20</p>
<p>1 And I wanted to bring up the concerns that Peaceful 2 Uprising has with this proposal. They fall under two 3 primary categories.</p> <p>4 The first is that we believe that this -- the 5 NOI fails to consider the full impacts of the mine. And 6 then we have some specific concerns about the impacts of 7 the operation as described in the NOI.</p> <p>8 First I'd like -- sorry about that. Would you 9 folks like me to stand up?</p> <p>10 So the first thing that, you know, we want to 11 make clear is that everyone knows that the PR Springs 12 Mine would be the first commercial tar sands mine in the 13 United States. And as such, this country and the state 14 of Utah has very little experience regulating this 15 industry. And so we want to make sure that the 16 regulations and the process for dealing with this mine 17 are as deliberate and careful as possible.</p> <p>18 So first and foremost, we believe that the 19 environmental assessment of the NOI is inadequate in 20 scope. While Earth Energy Resources -- and I will also 21 use the abbreviation, EER -- is planning to extract the 22 crude bitumen from the tar sands mine, that is not the 23 extent of the impact. The impact also goes to the 24 refineries that the bitumen is sent to, which will 25 introduce toxic contaminants, like lead and nickel,</p> <p style="text-align: right;">Page 19</p>	<p>1 considered as part of this mine application.</p> <p>2 So as a result of that, therefore, we ask that 3 the Division of Oil, Gas and Mining require disclosure of 4 where the tar sands crude would be refined -- if that 5 information is known -- or ask that it is disclosed as 6 soon as it's known, so that the public has an opportunity 7 to weigh in on the health issue. And the reason we ask 8 that is because this is such a new industry to the area 9 that we do not have experience in regulating.</p> <p>10 Another impact that we feel is not addressed in 11 the NOI is the impacts that the tar sands mine would have 12 on the road capacity in the two counties. Most of the 13 roads leading up to the mine are dirt and gravel roads, 14 many of which are, frankly, impassable in the wintertime 15 or after heavy rains. And assuming that Earth Energy 16 Resources will transport the crude oil from the mine in 17 standard tank trucks, this would require approximately 19 18 vehicle trips going to and from the mine each day, in 19 addition to the vehicles used by employees. And we feel 20 that this would introduce quite a bit of strain on the 21 road capacity out in these counties. And we would like 22 to know, you know, whether or not the tax payers of those 23 counties will be the ones paying for the maintenance of 24 the roads, which otherwise, you know, without the mine 25 would see much lower traffic.</p> <p style="text-align: right;">Page 21</p>

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<p>1 And in addition to the usage of the roads, that 2 means that there will be a significant increase in the 3 amount of dust produced by all that traffic. And while 4 the NOI touches on dust suppression at the actual mine 5 site, the dust created by traffic to and from the site, 6 there's no plan to deal with it, no plan to spray water 7 or upgrade the roads. And that is just as significant as 8 the mine -- or as the dust produced by mining operations.</p> <p>9 So as a result, we're asking that Earth Energy 10 Resources consult with both Grand and Uintah counties 11 about strategies to minimize the dust along the primary 12 access roads and help develop strategies for how to keep 13 those roads in proper shape without unduly burdening the 14 taxpayers of those counties.</p> <p>15 I want to transition from the scope of the NOI 16 now, to the actual impacts that we take objection to.</p> <p>17 The first refers to the overburden and 18 interburden storage areas which, as Paul mentioned, are 19 those brown sections towards the southern end of the 20 mining site. According to the NOI, 7.9 million cubic 21 yards of material will be removed from the mine in total, 22 and 4.8 million cubic yards of processed sand, 23 interburden, and overburden will be returned. That means 24 that the remainder of the material, 4.9 million cubic 25 yards, will be deposited in these areas, right here.</p> <p style="text-align: right;">Page 22</p>	<p>1 those are lacked as permanent structures, that they could 2 have a significant impact on the water quality of the 3 area.</p> <p>4 And then the last issue that I would like to 5 touch on is the question of water collection and quality. 6 According to the application, precipitation that 7 accumulates in the bottom of the mine in collection sumps 8 will be, "Removed from the pit along with the solid 9 materials and processed along with the bitumen-bearing 10 sands. As needed, it will also be pumped from the mine 11 and used for dust suppression on mine and plant roads."</p> <p>12 This is water that will be at the bottom of the 13 mine and exposed to the tar -- the raw ore of the tar 14 sands. We are concerned about the potential for surface 15 water contamination; and that if this water is used to 16 suppress dust without first testing and treatment, we're 17 concerned that it would present a risk to surface water 18 contamination.</p> <p>19 I would like to say that we have significant 20 concerns about the company's track record in this area. 21 The pilot mine that was dug -- this black area right 22 here, the initial mine -- from what we can tell it has 23 been left unlined, unmonitored, and untreated, and 24 available for wildlife and livestock to consume. 25 Pictures from SUWA and from Living Rivers, from both this</p> <p style="text-align: right;">Page 24</p>
<p>1 Our concerns about this rely on the impact that 2 those, essentially, valley fills will have on the head 3 waters of Willow Creek and the long-term monitoring and 4 maintenance.</p> <p>5 Under Section 404 of the Clean Water Act, any 6 discharge of dredged fill -- dredge or fill materials 7 into waters of the United States is forbidden unless 8 specifically authorized by a permit issued by the Army 9 Corps of Engineers. That's a federal permit that 10 supersedes state regulations.</p> <p>11 Now, these valley fills will basically be placed 12 into canyons that are the head waters of Willow Creek, 13 which flows into the Green River and then the Colorado 14 River. By very significantly disturbing those canyons, 15 it will have an impact on the headwaters of the water 16 flow. So we ask that Earth Energy Resources clarify 17 whether or not a dredge and fill permit is required, and 18 if not, what they will be doing to ensure that those 19 valley fills do not affect the water quality of Willow 20 Creek.</p> <p>21 And that goes into the long-term maintenance 22 question where, essentially, these -- in the NOI it says 23 that these will be stored permanently. But there is not 24 a plan to monitor surface water pollution, suppress dust 25 on those specific areas. And so we are concerned that if</p> <p style="text-align: right;">Page 23</p>	<p>1 summer and last summer, indicated that there were several 2 feet of water in the pit. And we're concerned that 3 hydrocarbons, heavy metals, and volatile organic 4 compounds might have leached into the water in the bottom 5 of that pit.</p> <p>6 I have serious doubts that if this is the level 7 of care that the company shows for our water and land and 8 wildlife, how can we expect them to meet their claim of 9 zero discharge and no impacts to surface water? It 10 appears that there already is an impact there, because 11 they have been left unmonitored.</p> <p>12 And I just want to mention that correspondence 13 from Paul Baker states that, "The operator would be 14 potentially subject to enforcement action if a discharge 15 occurred." That was in his response letter to our 16 petition letter.</p> <p>17 And one of the things that we would like to know 18 is: What types of enforcement action would be taken? 19 What level of discharge would require enforcement action? 20 And whether enforcement action will be investigated with 21 regards to the water collected at the pilot mine.</p> <p>22 And then the final comment that I would like to 23 make is that, we would just like clarity on the process 24 for public involvement and edification for all amendments 25 to the NOI. What types of changes would require public</p> <p style="text-align: right;">Page 25</p>

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<p>1 comment and what types of changes would not? That's a 2 question for the Division, that we'd like to have clarity 3 on.</p> <p>4 So to wrap up, you know, beyond the 5 contributions that this project and the product of tar 6 sands would have towards climate change, which we've 7 heard is not really the purview of the Division, Peaceful 8 Uprising and Living Rivers object to the approval of the 9 PR Springs Mine, due to failure of the NOI to address the 10 full water, air, and health impacts of the tar sands 11 introduced to the region; the inadequate plan to address 12 the need for road maintenance and dust suppression; the 13 lack of clarity regarding the need for a dredge and fill 14 permit under the Clean Water Act; and failure of Earth 15 Energy Resources to appropriately protect the mine site 16 from water contamination at its initial mining pit.</p> <p>17 And further concerns about water and air quality 18 and wildlife impacts will be addressed by John Weisheit.</p> <p>19 MR. WEISHEIT: I would like Ashley Anderson to 20 precede me, because what he has to say isn't really 21 lengthy.</p> <p>22 MR. ANDERSON: Okay. I'll stand up.</p> <p>23 Hi. My name is Ashley Anderson, and I'm with 24 Peaceful Uprising, been working with Living Rivers, also. 25 I'm going to read a statement by a person named Logan</p> <p style="text-align: right;">Page 26</p>	<p>1 involve destroying one of our greatest gifts.</p> <p>2 "Earth Energy Resources is planning to use a 3 suite of chemicals that should give Grand and Uintah 4 counties pause for analysis. D-limonene, one of the 5 components of EER solvents, has not been evaluated for 6 genotoxicity, carcinogenicity, potential for endocrine 7 disruption, or reproductive and developmental toxicity by 8 any major health organization, including the US 9 Environmental Protection Agency, World Health 10 Organization, or National Toxicology program.</p> <p>11 "Another component, alkylbenzene sulfonate, has 12 been proven toxic to aquatic fauna at the parts per 13 million level. This is equal to 1/10 of a percent, or 14 roughly equal to four drops of a pollutant in a 55-gallon 15 drum of water. This level of pollution is nearly 16 impossible to avoid during tar sands extraction and 17 processing, as the Canadian province Alberta is 18 discovering. The recent reporting of mutated fish" -- a 19 web link follows that -- "in Athabasca Lake downstream 20 from Alberta's tar sands operations and no other industry 21 raises more questions.</p> <p>22 "There's no man-made technology that can 23 guarantee zero leakage of contamination into our natural 24 waters. Survival in the high desert depends absolutely 25 on our natural waters. Once our waterways are polluted,</p> <p style="text-align: right;">Page 28</p>
<p>1 Hansen. He's a resident of Grand County. He couldn't 2 make it up here today because of car troubles. So he 3 prepared a statement and I'm going to read it for him. 4 I'll follow up with a few thoughts of my own, but make it 5 nice and short. He's a geochemist. So everything after 6 this point will be Logan Hansen.</p> <p>7 "As a citizen of the United States, resident of 8 Grand County, and as a geochemist specializing in the 9 affects of polluting natural systems, I am adamantly 10 opposed to the county and country moving forward with any 11 tar sands operations, and especially so for operations in 12 Grand County. We in Grand County are blessed with great 13 natural beauty, wide open spaces, and clean air and 14 water. We'd like to keep it that way.</p> <p>15 "The proposed operations in Grand and Uintah 16 counties will destroy natural habitats, pollute water, 17 change the physical landscape of the region, and leave a 18 chemical legacy likely to persist for generations. They 19 will produce few, if any, local jobs. And the profits 20 and extracted energy will not directly benefit the 21 counties. I am disappointed that the State of Utah and 22 the involved counties appear willing to sacrifice a 23 pristine tract of natural land for a bit of tax revenue. 24 The county should, instead, focus on stimulating the 25 local economies and producing local jobs that do not</p> <p style="text-align: right;">Page 27</p>	<p>1 it is extremely difficult, at best, to remediate them. 2 Any potential benefits to the proposed tar sands 3 operations are vastly outweighed by the risks." That's 4 the end of Logan Hansen's statement.</p> <p>5 On a personal level, I went to high school in 6 Grand County. I have family that lives there. I have 7 lived there many times. And I've also lived in Salt 8 Lake. I have to say the idea that this horrifying 9 operation of tar sands extraction coming to my state 10 upsets me and upsets a whole lot of people that are near 11 and dear to me. And it doesn't leave a very intelligent 12 legacy for our state or our country for a direction to go 13 in. These are limited resources that have a huge 14 environmental impact. And we'd be wise to take another 15 look at this permit. And I'm also disappointed in the 16 amount of time that Grand County was given to weigh in on 17 this. I know that it's a difficult job to keep track of 18 all this stuff for the DOGM. I appreciate their hard 19 work in doing this, to balance the public interests 20 against the legal precedents, and everything like that. 21 Sounds like a very complicated job that I wouldn't want 22 to do or probably wouldn't be capable of doing.</p> <p>23 But I think that it's time to step back, stop, 24 and take another look at this permit. It would be the 25 smart thing to do. Thanks.</p> <p style="text-align: right;">Page 29</p>

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<p>1 THE HEARING OFFICER: Mr. Anderson, is there a 2 possibility that we could get a copy of Mr. Hansen's 3 statement? 4 MS. WILLIAMS: Actually, we'll provide you with 5 a copy of all of our statements. 6 THE HEARING OFFICER: Okay. Great. 7 MR. WEISHEIT: Hi. My name is John Weisheit. 8 I'm 56 years old. And I'm doing this so you can get to 9 know me a little better. 10 I have recreated on the Colorado River my entire 11 life since infancy, and its tributaries. I have also 12 worked as a professional river guide on the Colorado 13 River and all its tributaries for over 30 years. I have 14 thousands of river trips. 15 My first trip through the Uinta Basin of the 16 Tavaputs Plateau, where this facility is going to be 17 existing, was in 1980. And my last trip was just a week 18 ago with Ms. Simon over here. We had a great time. 19 And I'm also an author. I have worked with Jane 20 Belnap and Robert Webb of the United States Geological 21 Survey. We wrote a book together about the human and 22 environmental history of the rivers in Canyonlands 23 National Park, and the changes that have occurred in the 24 last 125 years. This book was published by the 25 University of Utah.</p> <p style="text-align: right;">Page 30</p>	<p>1 MR. WEISHEIT: The conditional land use permit. 2 Thank you. 3 So the reason why is because we find this to be 4 a very complicated initiative. We're currently filing 5 FOIAs with the EPA. We haven't received these things 6 yet. We want to serve the public in its interest to 7 provide as much educational material about this. We need 8 time to get these documents and to disseminate them to 9 the public and to UDOGM. And we would like, 10 consequently, the administrative record to remain open so 11 that we can supply this information to the benefit of all 12 of us. 13 Do you think that might be possible? 14 THE HEARING OFFICER: I guess my question is: 15 Where is that process that Grand County is going through, 16 and how long will that take? 17 MR. WEISHEIT: Juliana said she would love to 18 answer that question. 19 MS. WILLIAMS: This is Juliana Williams with 20 Peaceful Uprising. I spoke with the Grand County 21 Planning Commission just last week, and they said that 22 while they'd had an initial pre-application meeting set 23 up with Earth Energy Resources, they had not yet received 24 an application for the conditional use permit. So that 25 permit, in my understanding, is required before any</p> <p style="text-align: right;">Page 32</p>
<p>1 In the year 2000, I became a river activist, and 2 we formed a nonprofit organization called Living Rivers. 3 We were first a project of the Center for Biological 4 Diversity. I'd like to point out that in our letter to 5 UDOGM, the Center for Biological Diversity also signed on 6 to this letter, as did red Rock Forests. Unfortunately, 7 they were not able to be here today. 8 When we got our 501(c)(3) status, that happened 9 in 1902, we now sponsored four projects in Utah that 10 includes Colorado River Keeper, which is an affiliate of 11 the Waterkeeper Alliance, which has its headquarters on 12 the Hudson River in New York. It's an international 13 organization. There's over 150 Waterkeepers in the; 14 world. And we also -- our other projects include the 15 Canyonlands Watershed Council, Uranium Watch, and River 16 Runners for Wilderness. 17 I would like to start out by asking a simple 18 request of the Division, and that is, is that the 19 administrative record allowed to be open. And I would 20 like it to be opened until 45 days, 60, 90 days, 21 whichever is appropriate, after Grand County issues its 22 land use permit to EER. 23 Do you think that could be accommodated? 24 THE HEARING OFFICER: Tell me more about the 25 land use plan.</p> <p style="text-align: right;">Page 31</p>	<p>1 mining operations can commence. 2 THE HEARING OFFICER: We may need some more 3 information on that. 4 MR. WEISHEIT: Okay. We would love to hear it 5 when you come to that decision. 6 Essentially, I would like to say that I believe 7 this project is a project of diminishing returns, and I 8 don't believe it has any real value or contribution to 9 society. I see no merit in the operation, whatsoever. 10 And I hope that the investors -- whether they be here or 11 they read this in the press, or whatever -- would please 12 consider an alternative renewable investment for our 13 energy needs in the future. 14 I did some simple math. It's something like 19 15 to 20 million barrels of oil is how much this country 16 uses in one day. And this seven-year operation will 17 provide enough energy for four hours. And I just don't 18 see how four hours of fuel for the nation is worth 19 destroying this landscape that Ashley described very 20 well. 21 It's fine for what it is. Its best value is to 22 leave it alone as a watershed, because the Colorado River 23 is a sole source river. It is the only river the seven 24 Basin states have. And it's the only river that the 25 tribes have within the Basin, as well as Mexico. I</p> <p style="text-align: right;">Page 33</p>

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<p>1 really don't think it is worth turning this into a 2 national sacrifice zone -- the loss of our watershed.</p> <p>3 Now, I do have a few questions, and I would like 4 to go over them a little bit. I was hoping -- I read the 5 NOI, the Notice of Intent, for this large operation. And 6 I have a lot of questions that I would like answered 7 either today, or by EER in a phone conversation or 8 letters, or by the Division. I don't know, but -- and 9 one of them is, is I want to talk about mass wasting of 10 the Tavaputs Plateau. Because, according to the United 11 States Geological Survey, debris flows or mass wasting is 12 more significant in the Tavaputs Plateau than any other 13 place on the Colorado Plateau -- that includes the Grand 14 Canyon and Cataract Canyon.</p> <p>15 The trips that I have done show massive amounts 16 of debris flowing through side canyons to the Green 17 River. And the reason why is because there's a high clay 18 content. And I am concerned that between the overburden, 19 the interburden, the amount of clay mixing in with sand, 20 I really see the potential during a heavy cloud burst 21 that this stuff would become super saturated and would 22 fail and fall into the drainages of Willow Creek. I'm 23 not convinced that EER can contain this huge amount of 24 debris mixed with clay. I think it will eventually end 25 up in Willow Creek, and possibly even the Green River.</p> <p style="text-align: right;">Page 34</p>	<p>1 reason why is because this is an arid landscape. And the 2 problem with having oil development in the Colorado 3 Plateau has always been about accessing water, especially 4 now because we're running out of water.</p> <p>5 So I'm afraid that some of this water usage 6 might affect other communities, such as Salt Lake City, 7 which do not have an older water right. This is a 1956, 8 1958 water right, which is older than the Central Utah 9 project. So they would actually have water preferences 10 to Salt Lake City in a time of shortage. And I think 11 that the people of Salt Lake need to know that.</p> <p>12 I'm also concerned about the Mexican spotted 13 owl, because there's new information that has come out 14 from the Ninth District on the appellate court, which has 15 ruled that habitat for the Mexican spotted owl should 16 include, not just nesting habitat, but foraging habitat. 17 In other words, if a Mexican spotted owl comes through 18 this area and he takes a vole or a mouse, that is 19 considered critical habitat. So I think that that 20 changes some of the statements that have been written in 21 the NOI. So I would like some clarification on this new 22 ruling by the Ninth Circuit.</p> <p>23 I'm concerned about light pollution, too, 24 because this is a facility that's going to be working 24 25 hours a day. When I visited the PR site a month ago, I</p> <p style="text-align: right;">Page 36</p>
<p>1 So I would like more information on that.</p> <p>2 I'm also concerned about this water well. They 3 say that the water is 360-acre feet annually, and that 4 they need this water for seven years. It's my 5 understanding this is a confined aquifer. In other 6 words, it's perched in the rock itself; it's not actually 7 flowing to the Green River. I want to know if that is, 8 indeed, true.</p> <p>9 And I want to know how much water is there. Do 10 you really have enough water to do dust suppression, 11 which I think is absolutely essential, which I'll explain 12 later as it relates to the snow packs of the Rocky 13 Mountains. I think this is a small, confined aquifer 14 that really can't last seven years. I think you'll 15 deplete it. And I would like to know if that's a 16 legitimate concern.</p> <p>17 I also think that there's -- I'm also concerned 18 about water consumption. The NOI says that they need 1.2 19 to 2.0 barrels of water for every barrel of oil. But 20 that -- does that include the water for dust suppression? 21 Does that include the water for the citrus-based solvent? 22 It takes an agricultural community to use water to make 23 the citrus to make the solvent. That water use has to be 24 considered into this. In other words, I want to know 25 what the overall water consumption of this is. And the</p> <p style="text-align: right;">Page 35</p>	<p>1 could see Dinosaur National Monument from PR Springs. 2 And so I'm concerned that this -- when I'm, or other 3 visitors -- and I've been to the Dinosaur National 4 Monument many, many times -- and if I look out and I see 5 this light pollution out there from their facility, I 6 think that that would be upsetting to some of the people 7 at Harper's Ferry -- at Harper's Viewpoint, for example. 8 So I would like to know more about that.</p> <p>9 But my biggest reason why this shouldn't happen 10 is because I go to meetings all the time with the seven 11 Basin states, which include Utah, and they always talk 12 about how there's cooperation between Utah and the other 13 states and Mexico -- the users of the Colorado River. 14 And right now the Bureau of Reclamation and the seven 15 states are engaged in a \$2 million study to determine the 16 future allocations and needs of the Colorado River in the 17 future. They're looking at the tree ring record. 18 They're looking at global circulation models to determine 19 what kinds of impact climate changes are going to have on 20 our water supply.</p> <p>21 So Utah is, by enjoining in this -- which they 22 are with the Bureau of Reclamation and the Department of 23 Interior -- they are already engaged in climate change 24 action and the issues right now, because they are part of 25 this study. So I beg to differ. Climate change is a</p> <p style="text-align: right;">Page 37</p>

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<p>1 part of this, according to Utah, because they have</p> <p>2 already invested money in this research, as being done by</p> <p>3 the Bureau of Reclamation, to determine the impacts of</p> <p>4 climate change on the future. And the reason why is</p> <p>5 because they think that in 40 years the Colorado River</p> <p>6 Basin will be depleted of 3 million acre feet. And if</p> <p>7 there is a depletion of 3 million acre feet, which is</p> <p>8 what Arizona uses in one year, then there's going to be</p> <p>9 some serious problems.</p> <p>10 And so I think what I'm trying to say is, this</p> <p>11 kind of activity is inappropriate because it produces</p> <p>12 carbon dioxide beyond normal, as Juliana mentioned three</p> <p>13 times; it creates dust; the dust gets on the Colorado</p> <p>14 Plateau and the Rocky Mountain snow pack. It creates</p> <p>15 early evaporation, early snow melt, and sublimation in</p> <p>16 the atmosphere. And these kinds of projects is what are</p> <p>17 taking our water away. And this water is more important</p> <p>18 than four hours of oil supply for the United States.</p> <p>19 So I do think that they need to at least -- it</p> <p>20 would be nice if the Division would take this to the</p> <p>21 other six states, to the tribes, and to Mexico, and let</p> <p>22 them assess this to see if this is the kind of activity</p> <p>23 that they want happening on their watershed. Because</p> <p>24 we're talking about a serious loss of water, otherwise.</p> <p>25 And I think it's fair that these other people know.</p> <p style="text-align: right;">Page 38</p>	<p>1 scope and the interest of this project to the other</p> <p>2 people, you will find that there is not a lot of support</p> <p>3 for this kind of activity on the Colorado Plateau.</p> <p>4 I think that's all I have to say at this point</p> <p>5 in time.</p> <p>6 Are there any questions?</p> <p>7 MR. PICARDI: I have two questions. My name is</p> <p>8 Mike Picardi. I'm a concerned citizen. And they both</p> <p>9 require very short answers.</p> <p>10 Has the permit already been granted for this</p> <p>11 mine, yes or no?</p> <p>12 MR. ALDER: No. The permit has been -- the</p> <p>13 decision has been approved. The permit has not been</p> <p>14 granted. And in addition to the conditions of obtaining</p> <p>15 other agencies' approval, which could happen after the</p> <p>16 permit's been issued, the permit will not be issued until</p> <p>17 a surety has been posted. I can't remember the amount of</p> <p>18 the surety.</p> <p>19 MR. PICARDI: And the second thing, what does</p> <p>20 Utah get back from the mine? What percentage of the</p> <p>21 money comes back to Utah?</p> <p>22 MR. ALDER: The land is owned by the School</p> <p>23 Institutional Trust Lands Administration, at least</p> <p>24 partially. And so there's a royalty in the lease</p> <p>25 payment, that they would be better able to address. I</p> <p style="text-align: right;">Page 40</p>
<p>1 I think it's also important that the Division go</p> <p>2 to Congressman Raul Grijalva in Tucson. And the reason</p> <p>3 why I say this is because he's currently introduced a</p> <p>4 bill to protect the water quality and quantity of the</p> <p>5 Colorado River below the Grand Canyon dam. So while he's</p> <p>6 trying to fix and improve the quality of the Colorado</p> <p>7 River in the lower Basin, up here in the upper Basin,</p> <p>8 we're doing things to destroy the watershed.</p> <p>9 So there is a contradiction of things going on</p> <p>10 here between the Basins. There is no cooperation. And</p> <p>11 that's exactly against the mandate of the reclamation and</p> <p>12 the other six parties of the Colorado River compact.</p> <p>13 So I think what I'm asking is that UDOGM please</p> <p>14 expand this to just outside of Grand and Uintah counties</p> <p>15 and involve the other people. And the reason why I say</p> <p>16 that is, Grand County has already done this once. We</p> <p>17 went to the Metropolitan Water District of Southern</p> <p>18 California, and we said, "We've got this huge Atlas</p> <p>19 tailings uranium pile right next to the river. And if</p> <p>20 the river floods and takes this downstream, it will</p> <p>21 irradiate your water forever." And it got the interest</p> <p>22 of the Metropolitan Water District, and they helped Grand</p> <p>23 County get that Atlas tailings pile off the Colorado</p> <p>24 River and into a safe place approved by the EPA.</p> <p>25 I think you will find that if you broaden the</p> <p style="text-align: right;">Page 39</p>	<p>1 don't know.</p> <p>2 MR. ANDREWS: My name is John Andrews. I'm</p> <p>3 legal counsel for the School and Institutional Trust</p> <p>4 Lands Administration.</p> <p>5 In answer to the question, the amount that would</p> <p>6 come back would be a royalty that would go to the</p> <p>7 permanent state school fund. And I believe it's actually</p> <p>8 a sliding scale royalty somewhere between 5 and 12-1/2</p> <p>9 percent, is my recollection. 6-1/2 at this point.</p> <p>10 MEMBER OF THE AUDIENCE: Of what? The profit</p> <p>11 they make?</p> <p>12 MR. ANDREWS: Of the net revenue. It's not a</p> <p>13 profit. It's based on essentially a modified gross. And</p> <p>14 the other issue would be property tax revenue, income</p> <p>15 tax.</p> <p>16 MR. WALLWORK: Kelsey Wallwork, Mr. Chairman.</p> <p>17 THE HEARING OFFICER: I'm sorry, I didn't quite</p> <p>18 hear the name.</p> <p>19 MR. WALLWORK: My name is Kelsey Wallwork. I</p> <p>20 watched the video of the Canadian tar sands. I think</p> <p>21 they said it's probably -- the land is irreparable after</p> <p>22 tar sands mining. And if that's true, are they -- well,</p> <p>23 sorry. Just a second.</p> <p>24 Are they willing to do this for profit, to the</p> <p>25 land if its irreparable? Is that -- I don't know if I'm</p> <p style="text-align: right;">Page 41</p>

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<p>1 putting it right.</p> <p>2 THE HEARING OFFICER: And I guess I'm not quite</p> <p>3 sure what your question is.</p> <p>4 MR. WALLWORK: Okay. If they are allowed to do</p> <p>5 tar sands mining, would it be irreparable after they're</p> <p>6 done?</p> <p>7 THE HEARING OFFICER: I think either the</p> <p>8 Division or the applicant can address it. But the whole</p> <p>9 concept of the Utah Mine Land Reclamation Act is that we</p> <p>10 would restore the land once mining is completed.</p> <p>11 MR. WEISHEIT: Thank you. Because you made me</p> <p>12 think of something I forgot to say. Just one more time.</p> <p>13 The other thing is Jane Belnap, who is a soil</p> <p>14 scientist who lives in Utah -- she's a close friend of</p> <p>15 mine -- she has written several papers that say once</p> <p>16 topsoil is removed on the Colorado Plateau, it very</p> <p>17 rarely -- what usually happens soils is it blows away or</p> <p>18 it gets washed down into the reservoir systems of the</p> <p>19 Colorado River. So the topsoil replacement -- storage,</p> <p>20 replacement, and reseedling, what I think you are really</p> <p>21 creating is a huge dust problem for our snowpack</p> <p>22 reservoirs in the Rocky Mountains and the sediment load</p> <p>23 in the reservoirs, especially in Lake Powell. I really</p> <p>24 don't think you are going to be able to contain that. I</p> <p>25 think it's going to just turn into a weed infested mess.</p> <p style="text-align: right;">Page 42</p>	<p>1 the expertise, the authority, or the jurisdiction of the</p> <p>2 Division of Oil, Gas and Mining. And those relate to the</p> <p>3 climate change concepts, the discussion of water rights</p> <p>4 and water quality issues, which are within other federal</p> <p>5 and state agencies and jurisdictions. And I think we</p> <p>6 need to attempt to confine ourselves to discussion: One,</p> <p>7 of the issues which DOGM can consider, and those issues</p> <p>8 that DOGM has jurisdiction over.</p> <p>9 Turning specifically to those issues, then.</p> <p>10 First, I'd like to correct a statement that -- I believe</p> <p>11 it was Ms. Williams made -- that this is not the first</p> <p>12 commercial tar sands facility in the United States. As</p> <p>13 many in the Division and within the industry are aware,</p> <p>14 the Asphalt Ridge tar sands project has operated off and</p> <p>15 on for over 25 years just outside of Vernal, Utah. And</p> <p>16 I'm aware there's also a number of small project -- pilot</p> <p>17 projects in other states. So that correction should be</p> <p>18 noted for the record, as well.</p> <p>19 Second, the comparison of this project to the</p> <p>20 Athabaskan tar sands is totally out of place. That is a</p> <p>21 hot water based process. It's an open process that</p> <p>22 creates large tailings ponds and large impoundments, and</p> <p>23 also a lot of residual issues. It uses a lot more water</p> <p>24 than this process will use -- probably three times as</p> <p>25 much. But other people can probably address that better</p> <p style="text-align: right;">Page 44</p>
<p>1 That's my personal opinion.</p> <p>2 I would like the Board to discuss this in more</p> <p>3 detail with Jane Belnap, who is a USGS scientist. I</p> <p>4 think she could be a valuable asset to making a</p> <p>5 determination on the environmental impacts on this</p> <p>6 particular facility.</p> <p>7 THE HEARING OFFICER: If you could hold on with</p> <p>8 questions, I will open it up at the end of this for those</p> <p>9 types of things. But I'd like to go ahead and hear from</p> <p>10 the applicant at this point. They are the ones who are</p> <p>11 asking permission to do this, so I think it's important</p> <p>12 to hear from them and their statements.</p> <p>13 MR. DAVIS: Thank you, Mr. Baza. My name is</p> <p>14 John Davis. As I mentioned earlier, I'm counsel for</p> <p>15 Earth Energy Resources. Initially, let me state that my</p> <p>16 understanding of the rules is that the only folks that</p> <p>17 are entitled to be heard -- even in an informal</p> <p>18 conference -- are those that have specifically protested,</p> <p>19 and that would be the petitioners. Let me also say,</p> <p>20 however, that we have no objection to questions or</p> <p>21 comments from the audience, so long as we keep those</p> <p>22 within the confines and the framework of this process.</p> <p>23 And I think we've got a problem with this</p> <p>24 process. And that is, initially, that there are many</p> <p>25 issues that have been raised that are not within either</p> <p style="text-align: right;">Page 43</p>	<p>1 than I. And finally, it uses a lot more energy than this</p> <p>2 process will use, and creates more CO2 emissions.</p> <p>3 Turning specifically to what EER has done, EER</p> <p>4 has fully complied with both the mine land reclamation</p> <p>5 requirements in the Utah code and the DOGM regulations</p> <p>6 under R647-4-101, et cetera.</p> <p>7 The approval of the NOI awaits final approval of</p> <p>8 our reclamation surety, which has not been posted yet,</p> <p>9 but will be, I believe, a \$1.7 million bond. Is that</p> <p>10 correct?</p> <p>11 MR. CUTHBERT: That's correct.</p> <p>12 MR. DAVIS: And also, we have an obligation to</p> <p>13 obtain other permits from other governmental entities.</p> <p>14 This has been a three-year permitting process to date --</p> <p>15 well, three-year permitting process from the beginning to</p> <p>16 the date that EER received its letter from DOGM with its</p> <p>17 approval, subject to the reclamation bond in September</p> <p>18 2009.</p> <p>19 As Steve Alder mentioned, you know, other</p> <p>20 agencies are involved in this. We have -- the EPA has</p> <p>21 primacy in the air program in Utah on Indian -- in Indian</p> <p>22 country. These lands, although they are not owned by the</p> <p>23 Indians, are within the jurisdictional confines of the</p> <p>24 Uncompahgre reservation. So the EPA is responsible for</p> <p>25 the issuance of air permits.</p> <p style="text-align: right;">Page 45</p>

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<p>1 And in March of 2010, the decision was made by 2 EPA -- and that letter is in the record -- that EER had 3 complied with the air permitting requirements and was not 4 required to obtain what's known as a NSPS air permit for 5 a refinery, and that it is not going to be a major source 6 for any, what are known as, criteria pollutants.</p> <p>7 It has also obtained its water permits from the 8 Utah Division of Water Quality for both groundwater and 9 surface water. The Division has specifically made a 10 finding that it will not impact groundwater resources 11 from a pollution standpoint. Certainly, if water is 12 drawn from an aquifer, there are going to be diminution 13 of aquifers, unless there's sufficient recharge. But 14 from a water quality standpoint, we have our permit for 15 groundwater discharge.</p> <p>16 Second, it will not impact surface waters. And 17 that decision has been also made by the Division of Water 18 Quality that no additional permit is required. We have 19 supplied to DOGM, and voluntarily did so because it 20 wasn't required by state law, a Storm Water Pollution 21 Prevention Plan called a SWPPP. And that is in place, 22 along with other litigation and protective measures 23 designed by EER and their environmental consultants, and 24 approved in the NOI. We're obligated to report and to 25 correct any deficiencies in those permits.</p> <p style="text-align: right;">Page 46</p>	<p>1 unlikely that even in a major flood event that any water 2 that did manage to escape from this site, if that were to 3 happen, would ever reach Willow Creek, let alone the 4 Green River.</p> <p>5 As the NOI demonstrates, all runoff is designed 6 to be contained. And further, no high TDS runoff will 7 leave the site and/or the control systems.</p> <p>8 As to water rights, those will be addressed by 9 the state engineer's office. And there is a process for 10 that, and a process for protests, if you have standing, 11 if you are another water user that has a concern. So we 12 don't believe this is the appropriate forum to either 13 discuss or debate water rights or the use of water at the 14 site.</p> <p>15 And at this point, I'd like to, then, turn it 16 over to Mr. Barclay Cuthbert, who is the vice president 17 of operations, for further comments.</p> <p>18 MR. CUTHBERT: Thank you, John. Barclay 19 Cuthbert of Earth Energy Resources. As John mentioned, 20 we've worked in close consultation with DOGM since 21 September of 2006 in the development of our NOI. And 22 certainly they have been very vigilant to make sure that 23 we have met the requirements of the large mine permit 24 regulations, and we've worked to do so.</p> <p>25 MEMBER OF THE AUDIENCE: Could we ask you to</p> <p style="text-align: right;">Page 48</p>
<p>1 Second (sic), we have a Spill Prevention Control 2 and Countermeasures plan, which is known as an SPCC plan, 3 that is designed to control spills of any chemicals used 4 on the property, and then double containment of any tanks 5 or any other structures on the facility. And those are 6 in place and will follow -- they follow the requirements 7 of the applicable state regulations.</p> <p>8 So contrary to the petitioner's allegations, 9 then, the operations will not, in their current form and 10 as permitted and as implemented, pollute either the 11 groundwater or the surface waters of the Green River 12 system. Nor will it adversely impact air quality beyond 13 that allowed under applicable law.</p> <p>14 The chemical wash that the EER is going to use 15 is an orange terpene, which is a biodegradable, organic, 16 and citrus-based reagent that will be utilized, and then 17 reused in the process with very little loss, other than 18 residual loss in the wet sands that are the tailing 19 result from the process.</p> <p>20 It's correct that Willow Creek is currently 21 identified as an impaired stream for total dissolved 22 solids. However, any runoff that were to escape from the 23 site would flow into Main Canyon, which is a tributary 24 stream. But this site is 25 miles above the confluence 25 between Main Canyon and Willow Creek. So it's extremely</p> <p style="text-align: right;">Page 47</p>	<p>1 stand?</p> <p>2 MR. CUTHBERT: So my name is Barclay Cuthbert. 3 I'm the vice president of operations for Earth Energy 4 Resources.</p> <p>5 Just to follow on from John's comments, I'd like 6 to say that we have been working closely with the 7 Division of Oil, Gas and Mining since September of 2006, 8 to develop our Notice of Intent, to make sure that we are 9 meeting the regulations that encompass that.</p> <p>10 As has been mentioned previously here, there's a 11 number of other permits that are required in order for us 12 to begin our operations. And it is our obligation to 13 make sure that those permits are in place before we 14 commence. And that, you know, obviously includes the 15 surety bond. But it's dealing with organizations like 16 the Division of Water Quality, Wildlife Resources, the 17 counties where operations are in place, EPA, and several 18 others.</p> <p>19 We are anxious to get this project underway. We 20 feel that it will be a good project for Utah, and 21 certainly not diminishing returns. It will provide 22 energy that is going to be used within the state. It 23 will provide jobs to the people of eastern Utah. It will 24 provide benefits to SITLA and other agencies. And we 25 think that it can be a model for future unconventional</p> <p style="text-align: right;">Page 49</p>

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<p>1 energy development.</p> <p>2 The process we've developed is a low water, low</p> <p>3 energy process. As John Davis mentioned, we're not going</p> <p>4 to have tailings ponds. That would minimize our</p> <p>5 footprint. We'll be able to reclaim as we go and</p> <p>6 minimize our footprint. So again, you're not going to</p> <p>7 see anything on the scale there.</p> <p>8 The size of the resource in Utah does not enable</p> <p>9 anything that you would see -- like what you would see in</p> <p>10 Athabasca. And the nature of the resource here is also</p> <p>11 different. It necessitates a different process to</p> <p>12 extract that bitumen from the oil sands. And that's the</p> <p>13 process that we've developed and have been working to</p> <p>14 commercialize.</p> <p>15 There's been a number of comments today about --</p> <p>16 I guess, including a global assessment of the emissions</p> <p>17 from our project. And I would comment that each step in</p> <p>18 this process is already under its own set of regulations.</p> <p>19 If you look at a refinery, it has to operate within its</p> <p>20 permit and ensure that its emissions are not exceeding</p> <p>21 what is allowed. And that, you know, to try to tie a</p> <p>22 refinery operation with our operations is really not</p> <p>23 applicable. You would not do the same thing to any other</p> <p>24 oil well or gas well in the country. And I certainly</p> <p>25 don't think it's applicable here.</p> <p style="text-align: right;">Page 50</p>	<p>1 where we plan our larger mining operations. And since we</p> <p>2 are planning further operations there, we did not reclaim</p> <p>3 any of that area. That does not, I guess, suggest that</p> <p>4 that's what's going to occur when we get into our large</p> <p>5 mining operations. We've got our reclamation plan within</p> <p>6 the NOI that's been thoroughly reviewed with the Division</p> <p>7 of Oil, Gas and Mining, and we intend to comply with it.</p> <p>8 There's examples in the State of mines that</p> <p>9 occur at elevations very similar to ours. And I think</p> <p>10 that people driving by them would not know that that is</p> <p>11 reclaimed mine area. We are very confident that we can</p> <p>12 do the same in the PR Spring project. That's all for</p> <p>13 now. Questions?</p> <p>14 THE HEARING OFFICER: Okay. Let's hold on for</p> <p>15 questions for just a minute. Give me a minute for an</p> <p>16 aside here.</p> <p>17 (A discussion was held between the Hearing Officer and</p> <p>18 the reporter off the record.)</p> <p>19 MR. DAVIS: Mr. Baza, I think before we conclude</p> <p>20 our initial statement -- I don't know if you want to take</p> <p>21 a break. That might be appropriate. But I would like</p> <p>22 Karla to respond and also give a brief technical summary</p> <p>23 of the control structures that they will have in place --</p> <p>24 that EER will have in place in this process.</p> <p>25 THE HEARING OFFICER: Yes, that's fine. I'm</p> <p style="text-align: right;">Page 52</p>
<p>1 The orange material that we use, it is a</p> <p>2 byproduct from citrus manufacturing, so it's not like a</p> <p>3 bio -- or ethanol for gasoline replacement. You do not</p> <p>4 grow oranges specifically for this. It's a byproduct</p> <p>5 that comes out of the existing industry. So there are no</p> <p>6 additional growth requirements to produce this chemical.</p> <p>7 It is something that is there already.</p> <p>8 As far as the test pit that we dug in 2005, as</p> <p>9 mentioned there is water that is collected in there. And</p> <p>10 what has happened is that we dug into the top layer of</p> <p>11 the oil sands. And when that project finished, what you</p> <p>12 can see is that oil sand naturally contains any water</p> <p>13 that falls incident on that pit. So what you'll see is,</p> <p>14 the water level will rise to the level of the oil sand.</p> <p>15 And then the porosity in the rock material above that</p> <p>16 allows discharge. So there's no containment issue that</p> <p>17 hasn't been there originally.</p> <p>18 And the other thing that I will add is, in this</p> <p>19 area, this area is a high plateau and it's incised by</p> <p>20 canyons. And if you want, you can walk around the</p> <p>21 deposit. And we've done so, to ascertain the aerial</p> <p>22 extent of it. So the exposure of that oil sand during</p> <p>23 the test operations really doesn't do anything different</p> <p>24 to what was there already. So our decision to leave that</p> <p>25 pit open -- as you can see that's right in the middle of</p> <p style="text-align: right;">Page 51</p>	<p>1 sorry. I didn't realize you weren't quite finished yet.</p> <p>2 So please go ahead and proceed.</p> <p>3 MR. DAVIS: Karla, I don't know if you'd be more</p> <p>4 comfortable sitting, or if you'd like to stand up and</p> <p>5 maybe use the maps and...</p> <p>6 MS. KNOOP: Either way is fine with me.</p> <p>7 Probably just so people can hear, I should probably</p> <p>8 stand.</p> <p>9 MR. DAVIS: All right.</p> <p>10 MS. KNOOP: My name is Karla Knoop. I'm a</p> <p>11 hydrologist with JBR Environmental Consultants. We are</p> <p>12 the group that assisted Earth Energy in putting together</p> <p>13 the information that was packaged as the Notice of Intent</p> <p>14 that went to the Agency to review. I certainly didn't</p> <p>15 prepare the entire NOI, but I am familiar with it. And I</p> <p>16 did prepare certain portions that had to do with the</p> <p>17 water issues in particular. And that's what I'll focus</p> <p>18 on here, since some of the comments and questions have</p> <p>19 related to water. I'll try to speak up as much as</p> <p>20 possible, I guess.</p> <p>21 To start out with, there are several different</p> <p>22 layers of investigation that we did in working on this</p> <p>23 project as it relates to water, that served to, I guess,</p> <p>24 ascertain whether we predict environmental impacts as a</p> <p>25 result of water. The first thing that I would note would</p> <p style="text-align: right;">Page 53</p>

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<p>1 be the site conditions themselves -- the environmental 2 conditions where the property is located, and also what 3 Earth Energy has proposed to do. We may note that the 4 watersheds that are affected by these areas are ephemeral 5 washes. They are very small. They are headwaters to 6 this other drainage, which in turn flows into Main 7 Canyon. Main Canyon is also an intermittent stream with 8 certain perennial reaches. But there's no live water, 9 surface wise, in the vicinity of the project. 10 Groundwater is a great depth at the project, as far as is 11 known from exploration drilling nearby.</p> <p>12 And all of this information was verified and 13 mentioned to the Division of Water Quality when we 14 consulted with them on the groundwater discharge permit 15 applicability. That being said, there's also a 16 commitment that if at a future time during operations any 17 other water sources were found, consultation would begin 18 again. That water would be dealt with. But in any case, 19 that's the first level, the site conditions and what they 20 say about the potential for water impacts.</p> <p>21 On top of that is what Earth Energy proposed to 22 do. Most of the facility, as a few people have 23 mentioned, will be contained. Runoff from the pit areas, 24 from the processing area, which is the blue area up here, 25 from the topsoil storage areas, from the roads, will all</p> <p style="text-align: right;">Page 54</p>	<p>1 involved, it's essentially -- the runoff may be sediment 2 laden, but it won't be salty. That was one reason why 3 the Willow Creek listing is not necessarily relevant, in 4 addition to the distance considerations. So essentially, 5 then, what JBR did was to work with Earth Energy and 6 suggest some of these treatment, erosion control 7 features, and that sort of thing. To go another step 8 further to say it's one thing we all know. It's one 9 thing to say, "Well, this will all be contained. We 10 aren't going to have a failure." But what if there is a 11 failure? Runoff, even in the event their process water 12 pond fails -- even though that's unlikely, even though 13 it's designed properly, it's lined, et cetera -- what 14 happens if that still occurs? That runoff then, in turn, 15 still has a few other layers of safety built into it. It 16 wouldn't run off down the slope because of the way the 17 property is designed and because of the treatment 18 structures that we have.</p> <p>19 But then you could say, again, "Well, what if 20 those fail, or on these out slope areas that are closer 21 to the waterways, what if they fail? What if sediment 22 escapes? What if runoff escapes? And runoff, by the 23 way, is allowed to escape. It's not meant to be stored 24 entirely. It just needs to be treated. The water 25 quality needs to be able to be sufficient so that water</p> <p style="text-align: right;">Page 56</p>
<p>1 be internally draining. They will be bermed, ditched, 2 whatever -- several other control structures, which we'll 3 talk about in a second. But the initial layout of the 4 project was purposely designed to prevent runoff, to 5 prevent the discharge of process water -- water being 6 used for supply to the process, there's a small amount of 7 water used there -- that will be contained and recycled. 8 It's a closed system. In the event of storm water -- 9 obviously there is snow, there is rain -- most of the 10 area will run off to the pit or to the control 11 structures.</p> <p>12 The only other -- the only exception to that is 13 the out slopes of these overburdened storage piles, and 14 these would be the triangular shapes here. Those are 15 structures that are not fully contained and will not 16 drain back to the pit. However, there are -- they're 17 hard to see on this figure -- but there are structures 18 that are designed at the toes of these to capture runoff, 19 to treat any sediments that may be -- or to capture any 20 sediments as well, and that water can then be discharged, 21 but it will be treated.</p> <p>22 One of the questions that came up was with total 23 dissolved solids and whether that material would be 24 conveying total dissolved solids. Because this isn't a 25 leeching system, because there aren't marine shales</p> <p style="text-align: right;">Page 55</p>	<p>1 quality is not degraded, and on downstream stream 2 standards are not exceeded.</p> <p>3 And that's where the design of the interburden 4 storage areas comes into play. And I won't go all the 5 way into it, but they have designed encapsulation of any 6 of the process sands. The materials that would be placed 7 on the surface and exposed to runoff would be larger 8 rock, not susceptible to erosion by rainfall. Mass 9 wasting is taken care of in the geotechnical design of 10 those structures. I'm not geotechnical engineer, so I 11 won't go into it. But that was a consideration. They 12 don't want those to fail. There are compaction isolation 13 slope considerations to minimize the risk of that -- of 14 those types of water quality impacts.</p> <p>15 That being said again -- and I think John 16 mentioned it -- these are ephemeral drainages. Yes, they 17 flow; yes they convey runoff. But it's quite a distance 18 to live water. And then as John mentioned, it's 25 miles 19 to the confluence of Willow Creek, which is the impaired 20 perennial stream in the state of Utah's 303(d) list, and 21 then another 38 miles to the Green River. So it's a 22 little bit different of an issue than if you are right on 23 top of a perennial stream.</p> <p>24 So that's a brief, sort of, summary of the level 25 of analysis that we looked at, and the types of</p> <p style="text-align: right;">Page 57</p>

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<p>1 protective measures that Earth Energy has not only 2 designed and committed to do, but has also, by Oil, Gas 3 and Mining regulations must -- must comply with. If 4 anything that's written in the plan doesn't function the 5 way that we intend it to, or the way that we assumed it 6 would function when we did our analysis, they are 7 obligated to revise -- revise the structure, revise the 8 maintenance, revise the mining process, whatever. And 9 that goes for the other regulations that we also dealt 10 with but that we're not really dealing with here. So I 11 think that's an adequate summary of...</p> <p>12 MR. DAVIS: It is. Thanks, Karla. I do have 13 a -- let me follow up with a couple of questions, though. 14 John Weisheit mentioned that, based on 15 conversations he'd had with Jane Belnap, that they did 16 not believe that the reclamation of the -- the use of the 17 topsoil and the revegetation would be successful out 18 there.</p> <p>19 Do you have any comments on that? 20 MS. KNOOP: Well, I'm not a biologist, but I 21 do -- you know, we do deal with reclamation of projects 22 throughout the state. So I can say just a little bit 23 about that.</p> <p>24 It is true that any time you salvage topsoil, 25 you are taking it out of its had natural state. There's</p> <p style="text-align: right;">Page 58</p>	<p>1 that?</p> <p>2 MR. DAVIS: Ask the chairman.</p> <p>3 THE HEARING OFFICER: Well, I think we're trying 4 to keep that very open among the parties.</p> <p>5 MR. DAVIS: As long as we don't get into 6 cross-examination. I wasn't planning on doing that.</p> <p>7 THE HEARING OFFICER: Go ahead and ask your 8 question.</p> <p>9 MR. WEISHEIT: Well, you know, I notice the 10 vegetation list includes shrubs, forbs, and grass. But a 11 lot of that is wooded. There's a significant amount of 12 wood.</p> <p>13 My question is: Why are you not replacing the 14 Douglas fir and the gambel oak that's growing there, 15 which is roost habitat for the Mexican spotted owl.</p> <p>16 MS. KNOOP: I didn't derive the species list 17 myself, but I do know that the Division of Wildlife 18 Resources, as well as the biologists from Oil, Gas and 19 Mining were consulted, and the species list was derived 20 based on those consultations. As far as roosting 21 habitat, and all that, I can't really address that.</p> <p>22 The one other thing that I wanted to say, and I 23 don't know Jane Belnap, but I have read some of her work 24 and am familiar with it. And she has a big following in 25 the State and a lot of knowledge. The soils that we are</p> <p style="text-align: right;">Page 60</p>
<p>1 some amount of compaction, change in organic matter, 2 content, et cetera, but reclamation happens all the time. 3 Earth Energy followed the Division of Oil, Gas and 4 Mining's reclamation guidelines in preparing the plan. 5 We have protective measures of the topsoil pile itself. 6 It will be confined, kept away from oncoming runoff. It 7 will not be eroding. I believe we called for interim 8 vegetation to be placed on the topsoil pile, which will 9 help keep some of the biological activity going. We also 10 are incorporating, or placing on top, the salvaged, 11 larger vegetation from the area.</p> <p>12 So they're doing whatever they can to facilitate 13 the future reclamation. For one thing, it's in their 14 best interest to. The harder it is -- the poorer the 15 topsoil is when they go back to reclaim, the harder it is 16 to get the plants to grow on it, obviously. And they are 17 required by their oil, gas and mining permit to reclaim 18 the vegetation to a certain extent. They will not be 19 able to get their bond back until they do that. So it's 20 in their best interest to do as good a job as they can 21 with the reclamation. And they are trying to maintain 22 the -- by their plan, maintain the topsoil in the best 23 quality that it can be, because it can be a tough thing 24 to revegetate.</p> <p>25 MR. WEISHEIT: Could I ask one question about</p> <p style="text-align: right;">Page 59</p>	<p>1 dealing with at Earth Energy are a lot different type of 2 soil than are over a lot of the Colorado Plateau. We've 3 worked with enough reclamation projects, as has Oil, Gas 4 and Mining, to know that there are some very, very 5 difficult areas to reseed. And this, I wouldn't count, 6 based on what I've seen in that same -- in that same 7 area, so. They get a little more rainfall. They are not 8 the saline soils like we have so much of in southeastern 9 Utah. And even on the Uinta Basin, they are not the 10 mancos shale.</p> <p>11 MR. WEISHEIT: The reason why -- you know, the 12 river guides have a nickname for the Tavaputs. We call 13 it the "wind tunnel." And it's because it's always 14 blowing, and it's quite severe up there. And, you know, 15 it might be better soil, it might not be as saline, but 16 it's going through very rigorous environmental stresses 17 at 8000 feet. So you're not going to -- well, why isn't 18 DOGM replacing -- or requiring replacement of trees for 19 shade and perching for wildlife?</p> <p>20 THE HEARING OFFICER: And I'm not sure that's a 21 question for Karla as much as it is a question for our 22 specialist within --</p> <p>23 MR. WEISHEIT: Like I said at the beginning, we 24 want to understand why you are doing these things, you 25 know. These are public lands and I think we -- you know,</p> <p style="text-align: right;">Page 61</p>

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<p>1 it's fair to ask these questions.</p> <p>2 THE HEARING OFFICER: Well, let's put it this</p> <p>3 way: Your question's been asked, and I may give the</p> <p>4 Division a little bit of time to answer that. But I have</p> <p>5 some questions of my own, and I'm going to take the</p> <p>6 prerogative as the hearing officer to do that.</p> <p>7 So is there anything more you want to say,</p> <p>8 Karla?</p> <p>9 MS. KNOOP: No, I don't think so. I mean, I'm</p> <p>10 happy to answer your questions, but...</p> <p>11 THE HEARING OFFICER: John, what about you?</p> <p>12 MR. DAVIS: No, I'm through. Thank you, Mr.</p> <p>13 Baza.</p> <p>14 THE HEARING OFFICER: Okay. Before we go</p> <p>15 further, I have a couple more questions for the court</p> <p>16 reporter.</p> <p>17 (A discussion was held between the Hearing Officer and</p> <p>18 the reporter off the record.)</p> <p>19 THE HEARING OFFICER: All right. In order to</p> <p>20 set this up, we had to beg a court reporter to come in</p> <p>21 and do this. Now, she's got a schedule she's got to keep</p> <p>22 later on today. So I'm going to try to do the rest of</p> <p>23 this and include some questions from the audience and try</p> <p>24 to finish up by 4:15, 4:20 at the latest. So as long as</p> <p>25 everyone recognizes that's the target I'm shooting for,</p> <p style="text-align: right;">Page 62</p>	<p>1 Let me ask some questions of the Division.</p> <p>2 Is our analysis -- do we make a concerted and</p> <p>3 significant effort to determine what erosion control and</p> <p>4 runoff plans have been made by the applicant? Is that</p> <p>5 part of our analysis?</p> <p>6 MR. BAKER: Yes, it is.</p> <p>7 THE HEARING OFFICER: Could you explain that a</p> <p>8 little more, maybe go into some explanation as to how we</p> <p>9 do that?</p> <p>10 MR. BAKER: I would, perhaps, have Tom Munson</p> <p>11 address that, if he could.</p> <p>12 THE HEARING OFFICER: Okay.</p> <p>13 MR. MUNSON: My name is Tom Munson. I thought</p> <p>14 I'd get out of doing this, but I guess I don't.</p> <p>15 Karla gave a good explanation of the hydrology</p> <p>16 of this area. It's an ephemeral drainage system,</p> <p>17 basically, where all these drainages would tend to flow</p> <p>18 in response to storm events. And so we tend to look at</p> <p>19 that. That would be the first thing we'd look at. I</p> <p>20 like to look at things in a global perspective in terms</p> <p>21 of, you know, we're not dealing with the Colorado River</p> <p>22 here, we're dealing with very small ephemeral drainages.</p> <p>23 And there's about 12 inches of rainfall a year in this</p> <p>24 environment.</p> <p>25 There were some identified seeps and springs in</p> <p style="text-align: right;">Page 64</p>
<p>1 we're hoping to wrap up by then.</p> <p>2 I had a couple of questions that I jotted down.</p> <p>3 And maybe after I ask my questions, then the Division, if</p> <p>4 you wanted to try to answer anything else that</p> <p>5 Mr. Weisheit had.</p> <p>6 One of the things, Mr. Weisheit, that this</p> <p>7 informal conference requires is that we have a definitive</p> <p>8 statement from you and your group as to what relief you</p> <p>9 are seeking. In other words, the Division has made a</p> <p>10 decision, at least a partial decision, on the permit</p> <p>11 application. We feel it's complete. We feel it's</p> <p>12 technically adequate. But I know that you are interested</p> <p>13 in more information. And having worked with</p> <p>14 technologists and scientists for many years, I know you</p> <p>15 can always ask for more information. So at some point we</p> <p>16 have to make a decision based on what we have available</p> <p>17 to us.</p> <p>18 I guess I'm asking you: Based on what we have</p> <p>19 before us today, or maybe with a small amount of</p> <p>20 additional information, would you see that your group</p> <p>21 wants this permit issued, or does your group want this</p> <p>22 permit denied?</p> <p>23 MR. WEISHEIT: Denied.</p> <p>24 THE HEARING OFFICER: Denied. Okay. Fair</p> <p>25 enough.</p> <p style="text-align: right;">Page 63</p>	<p>1 the area, but when they went out and did some</p> <p>2 reconnaissance, they could not even find the water right</p> <p>3 that had been applied for. It did not even exist. There</p> <p>4 was no evidence of flowing water right in that area. So</p> <p>5 there's some question regarding that, whether that even</p> <p>6 exists.</p> <p>7 So when I look at a project like this, I look at</p> <p>8 the disturbances associated with it. And here we have</p> <p>9 waste dumps, and we have a pit, and we have some</p> <p>10 facilities. And so the first thing I would do is, I</p> <p>11 would want to know what sort of controls are you going to</p> <p>12 have in place to prevent this disturbance or any runoff</p> <p>13 or erosion or sediment from leaving the site or not being</p> <p>14 treated before leaving the site. And so in this</p> <p>15 particular instance, everything that's within the pit and</p> <p>16 the facilities is self-contained; basically, it all</p> <p>17 drains within itself. So we wanted to make sure that</p> <p>18 there was ditches and ponds, and things of that nature</p> <p>19 within that system, that were properly designed that</p> <p>20 would contain that runoff.</p> <p>21 In terms of groundwater and surface water</p> <p>22 permits, there are other agencies involved, as well as</p> <p>23 myself. I'm more looking at the surface disturbance</p> <p>24 aspect of it and how they're going to treat the runoff</p> <p>25 and erosion associated with that project.</p> <p style="text-align: right;">Page 65</p>

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<p>1 And within that facilities area, they're using 2 what -- we use storm events in terms of -- it's a design 3 parameter where you take a certain amount of rainfall 4 that falls within a period of time, whether that's 24 5 hours, whether it's 6 hours. And we go to a NOAA, a 6 national ascribed chart, that gives us inches of rainfall 7 that would fall within that particular -- in this 8 particular situation, a ten-year event. It's a 9 probability, and -- the probability of that storm 10 occurring once every ten years. And so we use those 11 designs, generally as a rule of thumb, to design our 12 sediment ponds, things that would capture all the runoff 13 and any kind of erosion from that site. And we would 14 size them according to those design events.</p> <p>15 So there is a commitment in the plan that those 16 sediment ponds, those ditches, and everything, meet those 17 design events. And although we don't have specific 18 designs within the plan, there's a commitment within the 19 plan that, prior to any kind of construction occurring, 20 that detailed engineering drawings will be supplied to 21 the Division for our review. And if those are not 22 adequate, we would not allow the operation to go forward. 23 We would make sure that those designs were adequate. But 24 we allowed it to go forward, based on the fact that they 25 had that very specific commitment in the plan.</p> <p style="text-align: right;">Page 66</p>	<p>1 impact dislodging of any sediment. And then at the toe 2 of each of these waste rock dumps, there are sediment 3 structures that will capture any potential runoff. I 4 feel very certain that it would be very little, if any, 5 runoff. And because of the nature -- if you've looked at 6 some of these drainages, there's no evidence of any 7 defined channels. And most of the time when you go look 8 at any kind of a geomorphic analysis or -- a geohydrology 9 analysis of the drainage, or a formation of drainage, you 10 look for defined channels to determine the amount of 11 runoff over a thousand years.</p> <p>12 In this situation, there's very little evidence 13 of any defined channels. So I feel pretty certain and I 14 feel pretty secure that there will be very little runoff 15 in regards to this particular operation as it's designed. 16 And that's how I kind I went about my analysis.</p> <p>17 THE HEARING OFFICER: So Tom -- oh, sorry. 18 MR. ALDER: You were probably going to follow up 19 with this.</p> <p>20 I was just going to ask if you would mention the 21 storm water control plan.</p> <p>22 MR. MUNSON: Oh, the storm water control plan is 23 the S -- well the SWPPP. That is administered by the 24 Division of Environmental Quality. But in that 25 particular plan, there's all sorts of contingencies for</p> <p style="text-align: right;">Page 68</p>
<p>1 Runoff from the waste rock sites are being 2 controlled basically by the -- there's going to be a lot 3 of coarse, rocky material. And I don't know -- you know, 4 maybe all of all you would think of a talus slope -- you 5 know, a rocky talus slope -- as being very similar. So 6 you tend -- in those type of situations, the main thing 7 that causes erosion and sediment and runoff of sediment 8 or topsoil, which is a very valuable resource, would be 9 raindrop impact. Well, here you have a lot of rocky 10 cover on top of this material on these waste rock dumps, 11 so any raindrop impact from any kind of thunderstorm, or 12 whatever, would tend to be treated, in a sense, because 13 it wouldn't just catch the soil particles. It would 14 be -- I look at the analogy in the desert. If any of you 15 have ever been in the desert and look at a desert 16 pavement. If you look at the desert soils very closely, 17 you'll see they are covered with a lot of rock -- little 18 tiny pebbles, okay. And that's what prevents it from 19 running off. That's what prevents erosion from 20 occurring.</p> <p>21 So when you have a mine site, we're concerned 22 about exposed soils. So generally what we'd like to have 23 them do is put some sort of a coarse material rock, or 24 something of that nature, over something where you have a 25 slope like this. And it would prevent that raindrop</p> <p style="text-align: right;">Page 67</p>	<p>1 treatment of any kind of erosion or sediment that would 2 potentially occur during the operations that was not 3 contemplated in the plan. And so that was one that I 4 felt -- one of the strongest things that we could ask for 5 was for them to put this -- make it a part of our permit 6 and our plan. Because if you read the language of that 7 particular SWPPP, it provides a lot of safeguards, 8 monitoring, assurances, and requirements of the operator 9 to maintain this facility in an orderly manner, which 10 would preclude any kind of erosion or sediment problems. 11 And I thought that was really important. And they went 12 above and beyond in regards to that. And from our 13 perspective, that's not required by our rules.</p> <p>14 THE HEARING OFFICER: Thanks, Mr. Alder, for 15 asking, because that was a good follow up.</p> <p>16 Yeah -- you can go ahead and sit down. I just 17 have some process questions to ask the Division. And I 18 don't know which one of you is going to answer this, but 19 let me ask these things.</p> <p>20 Tom talked about other agencies being involved 21 in this. And I think we heard during the presentation 22 that there are other agencies of government involved in 23 this. If we are in a position to analyze for the mining 24 permit under the Utah Mine Land Reclamation Act, and 25 there is a showing that they've met those requirements,</p> <p style="text-align: right;">Page 69</p>

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1 how is our action coordinated with some of these other  
2 agencies of government? Who else is involved, and at  
3 what level? Who has the final say for Earth Energy to go  
4 ahead and conduct business?

5 MR. ALDER: That is a little bit of a  
6 complicated question, as far as who has the final say,  
7 since there are many steps and there's no mandatory way  
8 that an applicant has to go through those steps. And I  
9 think maybe Paul could address that from the Division's  
10 point of view.

11 MR. BAKER: Well, I would quote one of the  
12 rules, which says, "The approval or acceptance of the  
13 complete Notice of Intention shall not relieve an  
14 operator from his responsibility to comply with the  
15 applicable statutes, rules, regulations, and ordinances  
16 of all other agencies," is basically is what it says.

17 So we do coordinate this with the land  
18 management agency, which in this case is the Trust Lands  
19 Administration. We coordinate it very closely. And we  
20 notify the counties that are involved. But the applicant  
21 is responsible to obtain other permits that are required.

22 THE HEARING OFFICER: Mr. Weisheit mentioned the  
23 Grand County Land Conditional Use Permit. You are aware  
24 of that. Where are you in that process, and what is  
25 required from them in order to proceed?

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1 MR. CUTHBERT: Well, Grand County has a land use  
2 code and a conditional use permit application, as does  
3 Uintah County. In the case of Grand County, as  
4 mentioned, I've been down to meet with the planning  
5 department, or the planning commission, to look at those  
6 requirements. We're now -- Earth Energy is now in the  
7 process of compiling the information to meet the  
8 regulations of its land use code. And then that will be  
9 submitted. It goes through both the planning commission  
10 and the commissioner's public review of that document in  
11 order to operate in Grand County.

12 And as I said, the same is required for Uintah  
13 County. I may add, also, that we are working -- our  
14 traffic is going to be to the north into Uintah County,  
15 and we have been working very closely with that county on  
16 some mitigation matters, including approval of the Seep  
17 Ridge Road to reduce the dust that's created by us and by  
18 the other existing operations out there. But we are  
19 working with the groups that are out in the region to  
20 minimize the impact of our operation.

21 THE HEARING OFFICER: So having heard what  
22 Mr. Baker said, and knowing that you are going through  
23 this process at the local government level, I would  
24 assume that your intent would not be to commence  
25 operations until you had all those appropriate approvals,

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1 right?

2 MR. CUTHBERT: As the regulations say, we have  
3 an obligation to ensure that we have obtained all  
4 required permits. And Earth Energy is committed to doing  
5 that.

6 THE HEARING OFFICER: Let me go back to the  
7 Division for another process question.

8 Once we approve a permit, or once a permit is  
9 issued, once all the bonding and all the bells and  
10 whistles are in place for this, our responsibilities do  
11 not end as an agency, do they?

12 MR. BAKER: No.

13 MS. DEAN: No.

14 THE HEARING OFFICER: What kinds of things do we  
15 do to make sure they are abiding by the conditions of  
16 their permit?

17 MR. BAKER: The main thing we do would be to  
18 conduct periodic inspections, and to compare the mine  
19 plan with the operations and how they're conducting those  
20 operations. And if they're not in compliance with the  
21 mine plan, then we could potentially take enforcement  
22 action, which would include a fine, and to compel them to  
23 comply with the plan.

24 THE HEARING OFFICER: So in the example of what  
25 Mr. Munson was talking about, let's say you do have a

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1 storm event and you have a condition where they weren't  
2 able to control erosion, sediment, or runoff in the mine  
3 site. Would something like that result in a violation?

4 MR. BAKER: It could potentially, yes. We would  
5 look at -- there are various things we would look at with  
6 regard to that. If it's an extreme storm event,  
7 something beyond what the mine was designed for, we would  
8 take that into consideration.

9 THE HEARING OFFICER: Okay. Mr. Alder, the next  
10 question might be for you, and that is: Once we have  
11 this informal conference, once I render a decision, there  
12 is an opportunity for appeal. And I believe that appeal,  
13 as I mentioned earlier, was to the Board of Oil, Gas and  
14 Mining.

15 If such an appeal is made, does the Board look  
16 at all the information fresh, or do they rely on the  
17 record that we're keeping at this level?

18 MR. ALDER: No, it would be -- I think that's an  
19 important question that I wanted to be sure it was  
20 addressed, since that question was asked specifically as  
21 to whether or not you could keep this hearing open. This  
22 is an appeal by specific parties of a decision that's  
23 been made. The decision to approve the notice of  
24 intention is different than the approval to go forward.  
25 In other words, once that decision has been made final,

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<p>1 then it can be appealed. You don't have to wait to get 2 the surety and get all the other permits in place, then 3 go forward. I don't think it would be within the rights 4 of the Division, without the consent of the applicant, to 5 put everything on hold. They have a right to proceed, to 6 get a final decision, and require that anybody who 7 opposes that final decision either file a protest with 8 the Board or let it go forward.</p> <p>9 So there's an obligation within ten days of your 10 decision on this informal conference to file a request 11 before the Board.</p> <p>12 The hearing before the Board would be a formal 13 adjudication. There would be a need for the parties to 14 be represented by counsel. Witnesses would be sworn. 15 Testimony would be given. Evidence would be presented, 16 and specific issues would be addressed by the witnesses. 17 So it's a much -- a little more technical and difficult 18 burden. But that's the right of the applicant after this 19 hearing today.</p> <p>20 So I don't think it would be possible to hold 21 the administrative record open. I think that's a 22 confusion that has happened because there are so many 23 federal hearings and federal things that allow for that 24 type of administrative review. This is not that type of 25 proceeding.</p> <p style="text-align: right;">Page 74</p>	<p>1 necessary items in issuing this permit? And if you have 2 questions along the line of what else the Division needs 3 to do or how they should do it, I'd like to hear those. 4 Because I do want to be inclusive in making sure that all 5 that information is presented. But I don't want to get 6 into a battle of opinions here as to whether you met some 7 perceived standard or not.</p> <p>8 So knowing that, let's start out with a few 9 questions and see.</p> <p>10 Yes.</p> <p>11 MR. ALDER: If I could, just before you go to 12 that point, to address one more question by Mr. Weisheit, 13 he asked whether or not -- or maybe it was one of the 14 other petitioners -- asked about what the standard would 15 be for a significant revision, or a notice of a revision 16 in the permit application. And I just wanted to address 17 that.</p> <p>18 There is a statute that says that if there is a 19 revision in the permit operations for any reason, that 20 the applicant is obligated to apply for an amendment to 21 that or a change to that notice of intention. And 22 whether that is treated as an amendment or as a 23 significant revision depends on the nature of the change.</p> <p>24 A "significant revision" means that it would be 25 just like a brand new application. So if they decided to</p> <p style="text-align: right;">Page 76</p>
<p>1 THE HEARING OFFICER: And as I read our own 2 rules, it says that subsequent to this hearing that we're 3 having today, that I'm supposed to make a decision within 4 a reasonable length of time. There's no specific date on 5 that, it just says "a reasonable length of time."</p> <p>6 MR. ALDER: I believe that's correct, although 7 the Administrative Procedures Act also governs these 8 kinds of hearings, and I think it provides for 30 days.</p> <p>9 THE HEARING OFFICER: Okay. Just so you know, 10 in my side conversation with the court reporter, I don't 11 feel like I would want to make a decision without the 12 advantage of having a written transcript from this 13 hearing. So she indicates to me that that's probably 14 going to take about ten working days, or two weeks, to 15 deliver that. So I would have to assume that sometime 16 within that two-week to 30-day period is when I would be 17 making a decision on this matter.</p> <p>18 But that's different than having the 19 administrative record remain open, isn't it?</p> <p>20 MR. ALDER: Yes.</p> <p>21 THE HEARING OFFICER: Okay.</p> <p>22 All right, folks. Knowing that we have a little 23 bit of time left -- and I'd like you to remember that 24 what we're trying to do here is determine: Did the 25 Division meet its requirement to analyze for all the</p> <p style="text-align: right;">Page 75</p>	<p>1 go to a larger size or to use a different chemical 2 process, or do a different kind of remediation, then they 3 would have to go through an entire review of all the 4 impacts, just like they did for the initial impact.</p> <p>5 The question that was resolved with Sierra Club 6 and Southern Utah Wilderness Alliance was that when they 7 start the west pit, that will be considered a significant 8 revision, and notice will be given, and an opportunity 9 for further analysis will be taken.</p> <p>10 So the answer to your question is a little bit 11 vague. The language is in the definitions of amendment. 12 And it just says, "An amendment is an insignificant 13 change in the approved Notice of Intention."</p> <p>14 I think in this circumstance of this particular 15 mine, most changes, particularly where you are expanding 16 the size to include the west pit, would be considered a 17 significant revision. We tried to make that assurance, 18 but we made it expressly clear in this case. I don't 19 know if that helps you.</p> <p>20 THE HEARING OFFICER: Thank you.</p> <p>21 You've had your hand up a long time. Go ahead.</p> <p>22 MS. HENRY: My name is Deb Henry. I'm a civil 23 engineer the (inaudible) engineering. I have a question 24 as far as Earth Energy Resources trucking these materials 25 out of that area. As Juliana said, there are 19 trips in</p> <p style="text-align: right;">Page 77</p>

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<p>1 each direction. For 350 days, on average, for seven</p> <p>2 years is 93,000 trips a truck is going to be making on</p> <p>3 dirt roads in that area. And I'm concerned that Earth</p> <p>4 Energy Resources is not taking into consideration the</p> <p>5 damage they are going to be doing to those roads. And</p> <p>6 once they do and they inevitably go bankrupt, I'm worried</p> <p>7 that the resources aren't going to be in place in an</p> <p>8 escrow account of some sort for an area to be reclaimed.</p> <p>9 So I'm wondering what is in place right now to</p> <p>10 protect us in the event that Earth Energy Resources</p> <p>11 cannot fulfill that responsibility that we are allowing</p> <p>12 them with this permit.</p> <p>13 THE HEARING OFFICER: So to maybe paraphrase it</p> <p>14 and put it in the form of a question -- I want to make</p> <p>15 sure I've got this right.</p> <p>16 Did the Division analyze for transportation</p> <p>17 issues in regards to the mine permit? Is that a</p> <p>18 responsibility of ours?</p> <p>19 MS. DEAN: Off the mine area, no, it is not a</p> <p>20 responsibility of ours.</p> <p>21 THE HEARING OFFICER: So does it get analyzed,</p> <p>22 and who would do it?</p> <p>23 MS. DEAN: I don't know. It would definitely</p> <p>24 not be us. I'm not sure if it is analyzed.</p> <p>25 MS. HENRY: As those roads deteriorate, who pays</p> <p style="text-align: right;">Page 78</p>	<p>1 that. The Seep Ridge Road, which is the primary road --</p> <p>2 access road into this area, is a county road. Typically,</p> <p>3 traffic issues are addressed at the conditional use</p> <p>4 permit processes in the county. It's my understanding</p> <p>5 that Uintah County has been, because there are a number</p> <p>6 of other oil and gas operations that are utilizing the</p> <p>7 road. There have been requests, that have been fulfilled</p> <p>8 by various companies operating, to contribute to a fund.</p> <p>9 But there is also a state level mechanism called the</p> <p>10 "Mineral Lease Revenue Sharing Account" that funnels oil</p> <p>11 and gas revenue from federal lands back specifically to</p> <p>12 transportation infrastructure.</p> <p>13 At this point Uintah County is in the process of</p> <p>14 reengineering that road using those federal mineral</p> <p>15 leasing funds, money contributed by other companies that</p> <p>16 are operated in the area, and the like, as well as state</p> <p>17 funding for the upgrade of the road. So the main issue</p> <p>18 is that there is a state law mechanism for the recycling</p> <p>19 of revenue generated out of mineral operations to</p> <p>20 maintain transportation infrastructure.</p> <p>21 So that's just the background. If you'd like</p> <p>22 more information, I'd be happy to share it.</p> <p>23 THE HEARING OFFICER: Yes, sir.</p> <p>24 MR. CATANO: Mr. Cuthbert, my concern</p> <p>25 actually --</p> <p style="text-align: right;">Page 80</p>
<p>1 for that?</p> <p>2 MS. DEAN: Well, it's a county road, so it's</p> <p>3 maintained by the county. But the trucks would be just</p> <p>4 like any other licensed vehicles. Some with taxes --</p> <p>5 MS. HENRY: -- work on construction projects,</p> <p>6 those roads are going to be destroyed by all those</p> <p>7 trucks. And I don't think that it should be the</p> <p>8 counties' responsibility to be burdened with that -- I</p> <p>9 mean, with tax revenue being what it is.</p> <p>10 MS. DEAN: Well again, that's not something that</p> <p>11 we have analyzed. There is a lot of existing traffic</p> <p>12 there. But if you are concerned, that might be something</p> <p>13 that you would like to talk to the county about or some</p> <p>14 other agency that has that authority.</p> <p>15 MS. HENRY: I just want to make sure that the</p> <p>16 permit represents what we expect of Earth Energy</p> <p>17 Resources, as far as fulfilling responsibility for the</p> <p>18 taxpayers.</p> <p>19 THE HEARING OFFICER: I would say that any</p> <p>20 mining operation, we know involves transportation issues.</p> <p>21 And I'm not aware that in any minerals activity we have</p> <p>22 made an analysis of those transportation issues.</p> <p>23 MS. DEAN: Right. That's not our authority.</p> <p>24 But John...</p> <p>25 MR. ANDREWS: I can respond to some extent on</p> <p style="text-align: right;">Page 79</p>	<p>1 THE HEARING OFFICER: Would you state your name,</p> <p>2 please?</p> <p>3 MR. CATANO: It's James Catano, C-A-T-A-N-O, age</p> <p>4 59, Salt Lake City. I'm a writer and a reporter.</p> <p>5 My concern is for the profitability of your</p> <p>6 company; because by extension, if your company doesn't</p> <p>7 make any money, the School Trust Fund doesn't get any</p> <p>8 money -- all these agencies through taxation, that never</p> <p>9 materializes.</p> <p>10 What I've seen here is relatively small -- this</p> <p>11 is my gut going off here -- I've seen a relatively small</p> <p>12 area with a very limited resource to be exploited. I</p> <p>13 realize it involves a very extensive and expensive</p> <p>14 process compared to other forms of fossil fuel</p> <p>15 extraction. And you've got a product that has to be</p> <p>16 treated both on site, and a product that has to be hauled</p> <p>17 in vehicles, rather than put in a pipeline, and hauled to</p> <p>18 a refinery where you have an additional expensive</p> <p>19 process.</p> <p>20 What I'm concerned is that this project on paper</p> <p>21 will not pan out, per se, as a viable project. Maybe</p> <p>22 it's a loss leader. Maybe it's a pilot project for</p> <p>23 something going on in Canada. Maybe their government's</p> <p>24 tax subsidies and write-offs, that this is part of it.</p> <p>25 But my gut tells me that this project doesn't wash. So I</p> <p style="text-align: right;">Page 81</p>

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<p>1 would -- at some point -- maybe this is not the proper 2 venue for it, because it's out of -- perhaps out of venue 3 of this department. But before I want you messing around 4 in my state and possibly making environmental impacts, I 5 want to know if this is a legitimate project.</p> <p>6 MR. CUTHBERT: All right. Well, I do think the 7 economic analysis is outside of this particular meeting. 8 But certainly, you know, we are not undertaking this 9 project to go bankrupt. And there's been extensive 10 analysis of our costs of doing this and the revenues that 11 are available, as well as projections, as difficult as 12 they are, of future oil prices and everything else. The 13 economics on this project are reasonable to begin. 14 Obviously, this is the first deployment. We'd like to 15 see more occur as we prove our technology and prove that 16 we can extract bitumen in a responsible manner, and that 17 includes both Canada and the US, and potentially around 18 the world where other oil sands deposits exist.</p> <p>19 But we're not doing this one as a loss leader, 20 or anything like that. The economics do stand on their 21 own.</p> <p>22 MR. CATANO: If this project proves viable, 23 could then this technology be exported to the Athabasca 24 project and mitigate some of the harsh environmental 25 impacts up there? Or maybe you could just try it up</p> <p style="text-align: right;">Page 82</p>	<p>1 That's a massive project -- massive and expensive in many 2 ways. All things going as they are, why would Utah allow 3 you to do this for four hours of electricity?</p> <p>4 MR. CUTHBERT: Well, there's a contribution by a 5 multitude of sources when you look at the energy balance 6 for the United States. And there's, I don't know, tens 7 or hundreds of thousands of oil and gas wells around the 8 country that are each producing a fraction of the energy 9 that the country requires. And that extends from the 10 Rocky Mountains to California to the Gulf of Mexico. And 11 yes, if you look at a project in isolation, you say, 12 "Well, yeah, this is only four hours." But if you did 13 that for every project, there would probably not be, you 14 know -- at least there would be very few projects in the 15 United States that would go ahead as a meaningful source 16 of energy if you look at it on that basis.</p> <p>17 MS. O'NEILL: Yeah, that would be wonderful.</p> <p>18 MR. CUTHBERT: Well, look at it honestly. 19 There's wells that produce tens of barrels of oil per 20 day, or gas wells that have low flow production rates. 21 So you can say, "Well, what's the point?" But the 22 trouble is, in their totality they meet the energy demand 23 for the country. We just want to be a part of that.</p> <p>24 MS. O'NEILL: So for your seven-year project, 25 all that will go on in this seven years' time, truly</p> <p style="text-align: right;">Page 84</p>
<p>1 there?</p> <p>2 MR. CUTHBERT: Again, certainly that's in our 3 plans. That's more long range. But yes, if we can find 4 ways to use that in Athabasca, or find ways that we can 5 help to make the existing operations better, we would 6 certainly be anxious to do that.</p> <p>7 You know, right now I can't comment on the plans 8 about the operators in Athabasca. But once we, again, 9 show the process does work, as we've explained, and that 10 we were able to extract the material without creating the 11 tailing response, and things like that, I think there 12 will be interest in our process up there.</p> <p>13 THE HEARING OFFICER: I saw another hand over 14 here first.</p> <p>15 Yes.</p> <p>16 MS. O'NEILL: My name is Andrea O'Neill 17 (phonetic.) I'm just a concerned citizen. This is 18 really directed towards you. I only know what I know 19 from this meeting. And it seems like you've covered your 20 bases. You've done all the right things. The water 21 resource, it wouldn't have gone to another place, it 22 seems. No storm problems. No issues. Far enough away 23 from the big rivers. All of those things intact.</p> <p>24 But I've heard that it's four hours of 25 electricity that you would be deriving from this project?</p> <p style="text-align: right;">Page 83</p>	<p>1 those numbers are correct, that they're not exaggerating? 2 I mean wouldn't we really, for the benefit of four 3 hours -- if we could all just turn off and unplug our 4 houses for a day, we'd be better off than supporting...</p> <p>5 MR. DAVIS: Well, the entire United States would 6 have to do that. We consume, what is it, 20 million 7 barrels of oil a day. So yeah, you take it from a macro 8 standpoint, this project contributes a very small amount 9 to that. But 20 million barrels of oil a day is a huge 10 amount of oil utilized by this country every day. And as 11 Barday said, every project contributes to that. The 12 more projects we can keep in the United States, the 13 better off we are on our balance of trade. I don't think 14 everyone would agree to that, but I agree with you. The 15 less energy we can use, all of us, would make great 16 strides in reducing that.</p> <p>17 THE HEARING OFFICER: Again, as hearing officer, 18 I'm going to exercise some prerogative here. I'm taking 19 great liberties with the concept of an informal 20 conference. And, you know, I hope that the parties will 21 accept my liberal construction here. But I think these 22 questions are valuable. I think we've got to recognize 23 that our agency does things in a public forum. The 24 things we do are open to the public. And we want to make 25 sure that we do things with full disclosure.</p> <p style="text-align: right;">Page 85</p>

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<p>1        So again, I think that probably rather than a</p> <p>2        debate with the operators themselves, if you have</p> <p>3        specific things regarding the process, let's try to bring</p> <p>4        those out.</p> <p>5        Along the back row. Yes.</p> <p>6        MR. DECHRISTOPHER: My name is Tim</p> <p>7        DeChristopher. I'm a resident of Salt Lake City. I'm</p> <p>8        also a part of Peaceful Uprising. My question is for the</p> <p>9        Division regarding these last couple of comments about</p> <p>10       the positive benefit -- because most of what we heard</p> <p>11       from the Division today is that their analysis shows the</p> <p>12       negative impacts of this project are probably</p> <p>13       tolerable -- but I haven't heard from the Division of</p> <p>14       whether or not it is in your limitations, or your job as</p> <p>15       an agency, to be judging the positive benefits of a</p> <p>16       project, and whether it actually makes it worth it for us</p> <p>17       to allow an unprecedented experimental project in the</p> <p>18       watershed of the Colorado River for a foreign company to</p> <p>19       proceed with profits for providing four hours of oil</p> <p>20       supply to this country.</p> <p>21       If it's not the job of your agency, I wonder</p> <p>22       which agency it is that's actually asking that question</p> <p>23       of whether these projects actually make sense before they</p> <p>24       go ahead.</p> <p>25       And also along that lines, I'd like to know</p> <p style="text-align: right;">Page 86</p>	<p>1       change.</p> <p>2       THE HEARING OFFICER: Rather a compound question</p> <p>3       for Mr. Alder.</p> <p>4       MR. DAVIS: Wasn't a question. It was a speech.</p> <p>5       THE HEARING OFFICER: How would you respond?</p> <p>6       MR. ALDER: Let me start and first of all say</p> <p>7       that, that does bring us back to the statement that I</p> <p>8       made to the hearing officer at the beginning, which is</p> <p>9       that this is an opportunity to review the decision of the</p> <p>10       Agency with regard to this particular application, based</p> <p>11       on the statutes that have been set by the state</p> <p>12       legislature and the rules that have been promulgated by</p> <p>13       the Board, which govern the rights of individuals to</p> <p>14       develop resources within the state.</p> <p>15       And if they meet the requirements -- which</p> <p>16       include minimum practices for protection of water rights</p> <p>17       and for reclamation, posting a bond, those things that</p> <p>18       the legislature and the Division propose in its rules and</p> <p>19       are required to look at to make sure that it's done in a</p> <p>20       way that's considered responsible for the energy policy</p> <p>21       of the state, as it's been set by the various statutes --</p> <p>22       our obligation is to review the application and see that</p> <p>23       it has met those standards, and to do so in a way that is</p> <p>24       professional, that takes into account scientific</p> <p>25       evaluation by experts of the various issues -- water,</p> <p style="text-align: right;">Page 88</p>
<p>1       whether -- if that was a factor, whether this project was</p> <p>2       judged on its sole merits, or as Mr. Cuthbert was</p> <p>3       suggesting, that this is a model or example for other</p> <p>4       projects going forward to develop the rest of the tar</p> <p>5       sands resources in the state of Utah. And if that's the</p> <p>6       case, that this -- that those other benefits were</p> <p>7       included.</p> <p>8       I think it has to be acknowledged that a lot of</p> <p>9       those other tar sands resources are on BLM land, and not</p> <p>10       only on state land. And while the state agency refuses</p> <p>11       to acknowledge the impacts of climate change, the BLM has</p> <p>12       a clear mandate, under the Secretarial Order of 3226, to</p> <p>13       weigh the impacts of climate change on any of their</p> <p>14       resource management decisions. And that is something</p> <p>15       that they're going ahead with. They've asked further</p> <p>16       resolutions beyond Secretarial Order 3226 that further</p> <p>17       define how they are going to do that, including</p> <p>18       prioritizing renewable energy on their lands. A lot of</p> <p>19       those renewable energy zones, according to the Governor's</p> <p>20       office, overlap where a lot of the tar sands resources</p> <p>21       are, in the eastern part of the state. Which, all</p> <p>22       tolled, suggest that this project is really just a bridge</p> <p>23       to nowhere. Because the rest of those tar sands are not</p> <p>24       going to get developed, because they're a terrible idea</p> <p>25       when it comes to weighing the consequences of climate</p> <p style="text-align: right;">Page 87</p>	<p>1       air -- that are within the jurisdiction. And those that</p> <p>2       are not within our jurisdiction are met with other</p> <p>3       agencies' jurisdiction as their mandates are set by the</p> <p>4       legislature.</p> <p>5       So though a question, such as Mr. DeChristopher</p> <p>6       poses, might be appropriate at a forum of the energy</p> <p>7       office or the Governor's task force on energy policy,</p> <p>8       that is not the purpose of this hearing. This hearing is</p> <p>9       to determine whether -- for this specific application;</p> <p>10       for these lands; for this mining proposal with an</p> <p>11       operator who is willing to take the financial risk and</p> <p>12       believes it's profitable; and the Division has determined</p> <p>13       that if a bond has been set and is going to be posted,</p> <p>14       that that bond will be sufficient to meet all the</p> <p>15       environmental damages -- whether that was done correctly.</p> <p>16       MR. DECHRISTOPHER: So the answer to my question</p> <p>17       is no, that --</p> <p>18       MR. ALDER: No, Mr. DeChristopher, that's not a</p> <p>19       fair summary of what I said. The answer to the question</p> <p>20       is: It's not the question for this hearing.</p> <p>21       THE HEARING OFFICER: I'm going to take one more</p> <p>22       question.</p> <p>23       MR. DECHRISTOPHER: -- whether it was worth it.</p> <p>24       MR. ALDER: No, it is not. You're right.</p> <p>25       MR. DECHRISTOPHER: Okay. Thank you.</p> <p style="text-align: right;">Page 89</p>

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<p>1 THE HEARING OFFICER: I'm going to take one more 2 question. I think fellow in the colored shirt. 3 MR. EHRBAR: I'm Hans Ehrbar, professor at the 4 University of Utah. And I don't want to -- it's more a 5 declaration. I'm not trying to be critical of the 6 process here. 7 I think other people here are doing the process. 8 But I, as a citizen, I'm appalled that this is the 9 process. Because this is probably not going to be the 10 only tar sand development in Utah. If you look at the 11 Alberta tar sands, it has completely altered the whole 12 state. And that Utah does not have a process where its 13 citizenry can intelligently decide about the benefits and 14 the costs of this tar sand project as a whole, and 15 whether they want to get away -- or go ahead with it, but 16 this is just -- for us, having several different agencies 17 who do just small parts of it, I find is appalling. And 18 so don't take this as a criticism of you personally, but 19 I just want to put this out there. 20 THE HEARING OFFICER: Well, I said one more 21 question, but that wasn't a question. I'm going to shut 22 it down. I'm sorry. We do have to respect the needs of 23 our court reporter. 24 And I guess what I'm going to ask for is: We 25 only have about five minutes to do this, but I'd like a</p> <p style="text-align: right;">Page 90</p>	<p>1 a closing comment? 2 MR. WEISHEIT: First of all, I'd like to say 3 thank you to everybody for coming and for this 4 opportunity. 5 I would like to say that this is the beginning 6 of something that could be much bigger because of the 7 potential of oils, heavy oils, in Colorado, Utah, and 8 Wyoming. It is inappropriate to do this in the Colorado 9 Plateau, period. Because there is not enough water to 10 develop these resources, and so why start? 11 It is better to hold back, be patient with our 12 state and federal legislatures, because we are at an 13 impasse on our climate change legislation. It took years 14 to get the Wilderness Act, the Clean Water Act, the 15 Endangered Species Act. It's probably going to take 16 years to get climate change legislation. 17 But we need -- as a society, we need to make 18 these decisions because we are facing not only an energy 19 crisis but a water crisis. And allowing these projects 20 to go forward without resolving these fundamental 21 important questions is wrong. 22 And I am aware of the constraints of the 23 Division. I'm aware of the interests of EER. But as a 24 society, this is inappropriate. It should not go 25 forward.</p> <p style="text-align: right;">Page 92</p>
<p>1 closing summary from each of the three parties that are 2 party to this hearing. 3 Why don't we start with the Division. 4 MR. ALDER: I think I probably said as much in 5 my response to Mr. DeChristopher's question as needs to 6 be said. 7 I would maybe make the point that I think 8 there's a lot of confusion about the process and the 9 facts. This is not the Canadian tar sands development. 10 This is a different process. It's a different location, 11 and it's a different kind of impact. And I would 12 respectfully ask that the Board -- I mean that the -- 13 you, as hearing officer, and the individuals who are 14 challenging this, analyze it in the same detailed, 15 careful way that the Division did. 16 The Division agrees with the statement by the 17 petitioners that they want a careful and deliberate 18 decision. And that's what the Division felt that they 19 did. And they want to meet all the mandates, including 20 the protection of the environment, and I think that they 21 think they did that. And anything that specifically 22 addresses those issues, the Division cares a great deal 23 about and believes that they've been addressing those. 24 And that's probably all I have to say. 25 THE HEARING OFFICER: Mr. Weisheit, do you have</p> <p style="text-align: right;">Page 91</p>	<p>1 If I have to talk to the Governor, then I'm 2 going to. If I have to talk to Congress, I am not going 3 to stop here today. This is -- it cannot go forward. 4 Do you -- would you like to say something? 5 MS. WILLIAMS: May I just clarify our questions. 6 THE HEARING OFFICER: Sure. 7 MS. WILLIAMS: Juliana Williams. 8 THE HEARING OFFICER: Take just a couple of 9 minutes, though. 10 MS. WILLIAMS: Yeah, this will be quick. 11 THE HEARING OFFICER: All right. 12 MS. WILLIAMS: I think there are a couple of 13 questions we brought up in our statements that were not 14 addressed, that we would just like to re-articulate. One 15 is that we would like clarification on Earth Energy 16 Resource's plan to coordinate with the counties about the 17 access roads. You mentioned you had been communicating 18 with them. We'd like to know what kind of communication, 19 or what the plan is dealing with the strain on the roads, 20 the maintenance, and the suppression of dust. 21 I would like clarification on assuring long-term 22 maintenance and monitoring of the mine after the 23 operations cease -- after those seven years. Because, 24 you know, things happen over time, and we want to make 25 sure that these permanent structures are continuing to</p> <p style="text-align: right;">Page 93</p>

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<p>1 not harm the water quality and the air quality of this 2 area.</p> <p>3 We would like clarification on the testing of 4 the water quality that is in the small pit right now. It 5 was not addressed whether or not that had been tested for 6 contamination above and beyond natural levels.</p> <p>7 And then we would also like clarification, 8 finally, on the testing of collected precipitation and 9 water that's stored. We want to make sure that is tested 10 for contamination before it is sprayed for dust 11 suppression.</p> <p>12 THE HEARING OFFICER: Okay.</p> <p>13 MR. CUTHBERT: So I think I'd like to reiterate 14 that, as Earth Energy Resources, we have been working 15 diligently with DOGM in the development of our plans for 16 the PR Springs site. We have been through the 17 regulations in detail and through extensive consultation 18 with DOGM, making sure that we do address all the 19 requirements to commence a mining operation out there, 20 and will continue to do so.</p> <p>21 As several have mentioned, it's not in our best 22 interest to create a liability that is left there. We're 23 quite excited about the process we've developed, and the 24 fact that we can extract bitumen from oil sands in a far 25 more responsible manner than has been done to date. And</p> <p style="text-align: right;">Page 94</p>	<p>1 asked of staff immediately following this, to hang around 2 and try to do that.</p> <p>3 But as far as the hearing itself, I'm going to 4 call the hearing today closed. And know that a decision 5 will be rendered within the time period I've indicated. 6 So again, thank you very much. And I appreciate your 7 time.</p> <p>8 (The proceedings concluded at 4:21 p.m.)</p> <p style="text-align: right;">Page 96</p>
<p>1 I think that's something that -- to be admired in the 2 country -- in the countries in North America where you 3 have that opportunity to develop the technologies and to 4 deploy them. As I say, we're excited to be in Utah. We 5 think that this will be a long-term project that will 6 benefit the state and its citizens, and we will continue 7 to work with all the different agencies that we need to, 8 to make sure that things happen as they're supposed to.</p> <p>9 THE HEARING OFFICER: Okay. Well, I thank 10 everyone for being here today. This process is not an 11 easy one. It's hardly simple. And I know that the 12 Division staff has spent numerous hours, in terms of 13 evaluating and analyzing this project. And it's not over 14 yet.</p> <p>15 As I mentioned before, I'm going to await a 16 transcript of the proceedings. You can probably expect a 17 decision from me on this hearing within the next two 18 weeks to 30 days. And that decision document will also 19 indicate what the rights of appeal are to the Board of 20 Oil, Gas and Mining, so that you can understand what 21 those are.</p> <p>22 I don't really have a lot more to say. Again, I 23 respect everybody's time and effort to be here. I know 24 there were probably some additional questions that some 25 folks had. My sense was that if those questions can be</p> <p style="text-align: right;">Page 95</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 State of Utah ) 4 ss. 5 County of Salt Lake )</p> <p>6 I, Michelle Mallonee, a Registered 7 Professional Reporter and Notary Public in and for the 8 State of Utah, do hereby certify: 9 That the proceedings of said matter was 10 reported by me in stenotype and thereafter transcribed 11 into typewritten form; 12 That the same constitutes a true and correct 13 transcription of said proceedings so taken and 14 transcribed.</p> <p>15 I further certify that I am not of kin or 16 otherwise associated with any of the parties of said 17 cause of action, and that I am not interested in the 18 event thereof.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 97</p>

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